

SANFILIPPO JOHN B & SON INC

FORM 10-K (Annual Report)

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Address	1703 N. RANDALL ROAD ELGIN, IL, 60123-7820
Telephone	847-289-1800
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Symbol	JBSS
SIC Code	2060 - Sugar And Confectionery Products
Industry	Food Processing
Sector	Consumer Non-Cyclicals
Fiscal Year	06/28

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-K

- (Mark One)
- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
- For the fiscal year ended June 29, 2023
- OR
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM TO

Commission File Number 0-19681

JOHN B. SANFILIPPO & SON, INC.

(Exact name of Registrant as specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

36-2419677
(I.R.S. Employer
Identification No.)

**1703 North Randall Road
Elgin, IL 60123**

(Address of principal executive offices, Zip Code)

Registrant's telephone number, including area code: (847) 289-1800

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, \$.01 par value per share	JBSS	The NASDAQ Stock Market LLC (NASDAQ Global Select Market)

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes No

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

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes No

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of the voting Common Stock held by non-affiliates was \$724,390,311 as of December 29, 2022 (8,856,710 shares at \$81.79 per share).

As of August 17, 2023, 8,973,031 shares of the registrant's Common Stock, \$.01 par value ("Common Stock") and 2,597,426 shares of the registrant's Class A Common Stock, \$.01 par value ("Class A Stock"), were outstanding. The Class A Stock is convertible at the option of the holder at any time and from time to time (and, upon the occurrence of certain events specified in the Restated Certificate of Incorporation, automatically converts) into one share of Common Stock.

Documents Incorporated by Reference:

Portions of the registrant's definitive Proxy Statement for its Annual Meeting of Stockholders to be held November 2, 2023 are incorporated by reference into Part III of this Form 10-K.

PART I

Item 1 — Business

a. General Development of Business

John B. Sanfilippo & Son, Inc. was formed as a corporation under the laws of the State of Delaware in 1979 as the successor by merger to an Illinois corporation that was incorporated in 1959. As used throughout this annual report on Form 10-K, unless the context otherwise indicates, the terms “we”, “us”, “our” or “Company” collectively refer to John B. Sanfilippo & Son, Inc. and its wholly-owned subsidiary, JBSS Ventures, LLC. Our fiscal year ends on the final Thursday of June each year, and typically consists of fifty-two weeks (four thirteen week quarters). However, the fiscal year ended June 30, 2022 consisted of fifty-three weeks with our fourth quarter containing fourteen weeks. Additional information on the comparability of the periods presented is as follows:

- References herein to fiscal 2024 are to the fiscal year ending June 27, 2024.
- References herein to fiscal 2023, fiscal 2022 and fiscal 2021 are to the fiscal years ended June 29, 2023, June 30, 2022 and June 24, 2021, respectively.

We are one of the leading processors and distributors of peanuts, pecans, cashews, walnuts, almonds and other nuts in the United States. These nuts are sold under our *Fisher*, *Orchard Valley Harvest*, *Squirrel Brand* and *Southern Style Nuts* brand names and under a variety of private brands. We also market and distribute, and in most cases, manufacture or process, a diverse product line of food and snack products, including peanut butter, almond butter, cashew butter, candy and confections, snack and trail mixes, nutrition bars, snack bites, sunflower kernels, dried fruit, corn snacks, chickpea snacks, sesame sticks and other sesame snack products under our brand names and under private brands. Additionally, with our acquisition of the *Just the Cheese* brand, we have expanded our product offerings to include baked cheese snack products on a branded and private label basis. Our products are sold through three primary distribution channels, including food retailers in the consumer channel, commercial ingredient users and contract packaging customers.

Our website is accessible to the public at <http://www.jbssinc.com>. Information about us, including our code of ethics, annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to those reports are made available free of charge through our website as soon as reasonably practicable after such reports have been filed with the United States Securities and Exchange Commission (the “SEC”). Our materials filed with the SEC are also available on the SEC’s website at <http://www.sec.gov>. References to our website addressed in this Form 10-K are provided as a convenience and do not constitute, and should not be viewed as, an incorporation by reference of the information contained on, or available through, the website. Therefore, such information should not be considered part of this Form 10-K.

Our headquarters and executive offices are located at 1703 North Randall Road, Elgin, Illinois 60123, and our telephone number for investor relations is (847) 289-1800, extension 4612.

b. Segment Reporting

We operate in a single reporting unit and operating segment that consists of selling various nut and nut related products through three distribution channels. See Part II, Item 8 — “Financial Statements and Supplementary Data” for our net sales, net income and total assets.

c. Narrative Description of Business

(i) General

We are one of the leading processors and distributors of tree nuts and peanuts in the United States. We manufacture and market the *Fisher*, *Orchard Valley Harvest*, *Squirrel Brand* and *Southern Style Nuts* brand names and manufacture and distribute numerous private brands as well. In addition, with our acquisition of the *Just the Cheese* brand, we have expanded our product offerings to include baked cheese snack products on a branded and private label basis. Through a deliberate strategy of focused capital expenditures and complementary acquisitions, we have built a generally vertically integrated nut processing operation that enables us to control almost every step of the process for pecans, peanuts and walnuts, including procurement from growers, shelling, processing, packaging and marketing. Vertical integration allows us to enhance product quality and, in most crop years, purchase inshell pecans, peanuts and walnuts from growers at lower costs as opposed to purchasing these nut meats from other shellers. We believe that our business model typically works to our advantage in terms of cost savings and provides us with better insight into crop development.

Our brands are some of the most well-recognized in the packaged food industry. In recent years we have developed *Fisher* recipe nuts as the leading brand in the category through strong marketing campaigns, merchandising, and promotional support. We have increased distribution and launched innovation with our *Orchard Valley Harvest* and *Fisher* snack nut brands in many retailers. We have also expanded into new channels and business models with *Southern Style Nuts* and *Squirrel Brand*. Our branded and private brand products are sold through the major distribution channels to significant buyers of nuts, including food and other retailers (both brick and mortar and e-commerce), commercial ingredient users and contract packaging customers. Selling through multiple distribution channels allows us to generate multiple revenue opportunities for the nuts we process. For example, pecan halves could be sold to food retailers under our *Fisher* brand, and pecan pieces could be sold to commercial ingredient users. We process and sell all major nut types consumed in the United States, including peanuts, pecans, cashews, walnuts and almonds (our major nut types). These are sold in a wide variety of innovative packaging, which provides our customers a complete nut product offering.

(ii) Principal Products

Our principal products are raw and processed nuts. Including trail and snack mixes, these products accounted for approximately 92%, 94% and 95% of our gross sales for fiscal 2023, fiscal 2022 and fiscal 2021, respectively. The nut product line includes almonds, pecans, peanuts, black walnuts, English walnuts, cashews, macadamia nuts, pistachios, pine nuts, Brazil nuts and filberts. Our nut products are sold in numerous package styles and sizes, and we offer our nut products in a variety of different styles and seasonings. We sell our products domestically to retailers and wholesalers as well as to commercial ingredient and contract packaging customers. For more information about our revenues in our various distribution channels, see Part II, Item 8 — “Financial Statements and Supplementary Data”.

We acquire all of our peanuts and walnuts directly from domestic growers. The majority of our pecans are acquired from domestic growers with the remainder acquired from growers in Mexico. We purchase the balance of our raw nuts from importers, trading companies and domestic processors.

Furthermore, we manufacture and market peanut butter in several sizes and varieties. We also market and distribute, and in many cases process and manufacture, a wide assortment of other food and snack products. These other products include nutrition bars, salad toppings, snacks, snack bites, dried fruit and chocolate and yogurt coated products sold to retailers and wholesalers. Baking ingredients are sold to retailers, wholesalers and commercial ingredient customers. Additionally, bulk food products are sold to commercial ingredient users. Moreover, an assortment of sunflower kernels, pepitas, snack mixes, almond butter, cashew butter, candy and confections, corn snacks, chickpea snacks, sesame sticks and other sesame snack products are sold to retail supermarkets, mass merchandisers and commercial ingredient users with a wide variety of toppings for ice cream and yogurt sold to commercial ingredient users. Lastly, with our acquisition of the *Just the Cheese* brand, we have expanded our product offerings to include baked cheese snack products.

(iii) Customers and Channels

We sell our products to approximately 260 customers through the consumer, commercial ingredient and contract packaging distribution channels. The consumer channel supplies nut-based products, including consumer-packaged products, to retailers in the United States including supermarket chains, wholesalers, supercenters, internet retailers and other retail outlets. We sell products through the consumer channel under our brand names, including the *Fisher*, *Orchard Valley Harvest*, *Squirrel Brand*, *Southern Style Nuts* and *Just the Cheese* brands, as well as under our customers’ private brands. The commercial ingredient channel supplies nut-based products to other manufacturers to use as ingredients in their final food products such as bakery, confection, cereal and ice cream. This produces nut-based products that are customized to the specifications of chefs, national restaurant chains, foodservice distributors, fast food chains, institutions and hotel kitchens. We sell products through the commercial ingredient channel under our *Fisher* brand and our customers’ private brands. Our contract packaging channel produces and packages nut and fruit-based snacks for other food manufacturers under their brand name.

We are dependent on a few significant customers for a majority of our total net sales, particularly in the consumer channel. Net sales to Wal-Mart Stores, Inc. accounted for approximately 36% of our net sales for fiscal 2023, 35% of our net sales for fiscal 2022 and 34% of our net sales for fiscal 2021. Net sales to Target Corporation accounted for approximately 15% of our net sales for fiscal 2023 and 14% of our net sales for fiscal 2022 and fiscal 2021. No other customer accounted for more than 10% of net sales for any period presented.

(iv) Sales and Distribution

We market our products through our own sales department and through a network of approximately 65 independent brokers, independent distributors and suppliers, including group purchasing organizations.

We distribute products from each of our principal facilities. The majority of our products are shipped from our facilities by contract and common carriers.

We operate a retail store at our Elgin headquarters. This store sells *Fisher* snack and baking products, *Orchard Valley Harvest*, *Squirrel Brand*, *Southern Style Nut* and *Just the Cheese* products, bulk foods and other products, produced by us and other vendors directly to consumers.

(v) Marketing

Marketing strategies are developed for each distribution channel and focus primarily on branded products. Branded consumer efforts concentrate on building brand awareness, developing, identifying and introducing new products, attracting new customers and increasing distribution and consumption in the snack nut, recipe nut and produce categories. Private brand and commercial ingredient channel efforts are focused on category management, new product identification and introduction, brand awareness and merchandising support.

A significant portion of our branded marketing efforts are focused on compelling consumer campaigns that include advertisements (e.g., online video, social and influencer activations and partnerships, search engine marketing and media partnerships), product sampling and coupon offers. Our integrated marketing efforts for the *Fisher* brand include partnerships with chefs, influencers, media partnerships and professional baseball sponsorships. Additionally, shipper display units and other point of sale promotions are utilized in retail stores in an effort to gain additional temporary product placement and to drive sales volume. We work with third-party information agencies, such as Circana (formerly IRI), to monitor the effectiveness of our marketing and measure product growth in comparison to our competition and the product category.

Commercial ingredient trade promotion typically includes periodically attending regional and national trade shows, trade publication advertising and one-on-one marketing. These promotional efforts highlight our processing capabilities, broad product portfolio, product customization and packaging innovation.

Through participation in several trade associations, funding of industry research and sponsorship of educational programs, we support efforts to increase awareness of the health benefits, convenience and versatility of nuts as both a snack and a recipe ingredient among existing and future consumers of nuts. In the future, we expect to increase our participation and funding with trade associations and groups to focus on sustainability efforts while continuing to partner with farmers to further mitigate climate risk.

(vi) Competition

Our nuts and other snack food products compete against products manufactured and sold by numerous other companies offering branded and private brand products in the snack food industry, some of whom are substantially larger and have greater resources than us. In the nut industry, we compete with, among others, Hormel Foods Corp. (Planters brand) and numerous regional snack food processors. We also compete with the Diamond brand, among others. Competitive factors in our markets include price, product quality, customer service, breadth of product line, brand name awareness, method of distribution, sales promotion, category management, service level compliance and innovation. The combination of our generally vertically integrated operating model with respect to pecans, peanuts and walnuts, our product quality, product offering, brand strength, innovation, distribution model and our focus on nut and nut related products generally enable us to compete in each of these categories; however there can be no guarantee that our products will continue to be competitive with many of our larger competitors. See Part I, Item 1A — “Risk Factors”.

(vii) Raw Materials and Supplies

We purchase nuts from domestic and foreign sources. In fiscal 2023, all of our walnuts, almonds and peanuts were purchased from domestic sources. We purchase our pecans from the southern United States and Mexico. Cashew nuts are imported from Vietnam and certain West African countries. For fiscal 2023, approximately 31% of the dollar value of our total nut purchases was from foreign sources.

Competition in the nut shelling industry is driven by shellers’ ability to access and purchase raw nuts, to shell the nuts efficiently and to sell the nuts to processors. We shell all major domestic nut types, with the exception of almonds, and are among a few select shellers who further process, package and sell nuts to the end-user. Raw material pricing pressure and the high cost of equipment automation have previously contributed to a consolidation among shellers across all nut types, especially peanuts and pecans.

As discussed, we are generally vertically integrated with respect to pecans, peanuts and walnuts. Unlike our major consumer distribution channel competitors who purchase nuts on the open market, we purchase a substantial portion of our pecans, peanuts and walnuts directly from growers.

Due, in part, to the seasonal nature of the industry, we maintain significant inventories of peanuts, pecans and walnuts especially in the second and third quarters of our fiscal year. Fluctuations in the market price of pecans, peanuts and walnuts and other nuts may affect the value of our inventory and thus may also affect our gross profit and gross profit margin. See Part I, Item 1A — “Risk Factors”.

We purchase other inventory items and packaging materials such as roasting oils, seasonings, plastic jars, labels, stand-up bags and composite and clear-plastic cans from other third parties. Material costs, including tree nuts, peanuts, other commodities, packaging and other edible ingredients represented approximately 76% of our total cost of sales for fiscal 2023.

(viii) Trademarks and Patents

We market our products primarily under name brands, including the *Fisher*, *Orchard Valley Harvest*, *Squirrel Brand*, *Southern Style Nuts* and *Just the Cheese* brand names. *Fisher*, *Orchard Valley Harvest*, *Squirrel Brand*, *Southern Style Nuts* and *Just the Cheese* are registered as trademarks with the U.S. Patent and Trademark Office as well as in various other foreign jurisdictions. We do not own any trademarks for any private brands. Those trademarks are owned by the respective private brand customer. Our trademarks are important as they provide our customers with information about the quality of our products. However, registration and use of our trademarks in foreign jurisdictions may be subject to certain risks in addition to other risks generally related to our intellectual property. See Part I, Item 1A — “Risk Factors”. We also own several patents of various durations. For the foreseeable future, we expect to continue to renew those trademarks that are important to our business as well as expand registration of our trademarks into new jurisdictions. We intend to protect our intellectual property rights vigorously.

(ix) Human Capital

As of June 29, 2023, we had approximately 1,400 full-time employees across our four locations.

We recognize that, in order for our company to be successful, our employees must be healthy, well-trained and motivated to do their best every day. Therefore we relentlessly focus on attracting, retaining and effectively managing our employees. The key aspects of our human resources program and objectives are as follows:

Health and Safety: As a producer, manufacturer and processor of nuts and nut-related products, we are subject to extensive food and employee safety laws and regulations. We place a high priority on employee health and safety as part of our continuous improvement culture. Our total occupational injury rate remains in line with the food manufacturing industry average. We continue to enhance our safety programs by investing in systems and controls focused on injury and accident prevention, as well as risk elimination. During fiscal 2023, we focused on enhancing our programs, including lock-out tag-out, forklift, emergency evacuation, and machine guarding which help us to prevent future safety risks. We believe properly prioritizing risks and addressing the most critical safety matters helps us to be proactive in building a sustainable safety culture.

Diversity, Equity and Inclusion: We recognize that our business is stronger and more successful when supported by a diverse workforce. Our goal is to maintain and promote diversity among our employees, foster an inclusive and equitable environment where differences are celebrated and provide adequate support to achieve our goal. In fiscal 2023, our Diversity, Equity and Inclusion council organized various events facilitated through our Employee Resource Groups. The company rolled out a new compensation structure and received a pay equity certification from the State of Illinois.

Training, Development and Promotion: We believe that training, developing and promoting our employees is an important part of our vibrant employee culture. These measures enhance our performance and are an important component of maintaining employee satisfaction. We offer training to our employees on a variety of subjects related to professional development, workplace fundamentals, business, computer applications and industry specific subjects such as our Nutology-101 courses. In fiscal 2023 we formalized the Leadership Development program that was piloted in prior fiscal year and welcomed a new cohort of 36 participants. Through the course of the program participants will be able to expand their responsibilities and move into higher level jobs with us. We also conduct annual mandatory training for all employees covering topics such as food safety, workplace safety and various regulatory and compliance related subjects. In fiscal 2023, approximately 16% of our employees received promotions and a promotion-related salary increases.

Employee Engagement: Engagement and retention continues to be one of the most important areas of focus for us. We believe that nothing drives engagement better than credible leadership. Therefore in fiscal 2023, we purposefully emphasized the importance of being an effective leader and offered various leadership trainings to our management team. We also assigned an annual goal of being an inclusive and engaging leader to all people managers. Among other things, we periodically conduct employee surveys to monitor employee satisfaction, engagement and concerns.

Employee Rewards: Through our Sanfilippo Value Added ("SVA") and Total Team Performance ("TTP") incentive programs, we provide annual cash bonus opportunities to motivate and reward our employees, as well as align their interests with those of our stockholders. Employees participate in the SVA or TTP program, not both. Approximately 21% of our employees participate in the SVA program and approximately 79% participate in the TTP program. In addition to the SVA and TTP incentive programs, we offer annual sales incentives to our sales and marketing employees and annual monetary leadership awards to our top performers across all functions. We are also proud to offer a comprehensive and competitive benefits package designed to meet the diverse needs of our employees at every stage of life, including a company-sponsored healthcare program, a 401(k) program with a generous company matching contribution and a new non-qualified deferred compensation plan to provide executives with the opportunity to accumulate assets for retirement on a tax-deferred basis. In fiscal 2023, we enhanced our 401(k) program by introducing auto-enrollment and expediting employee eligibility to receive matching contributions. We continue to closely monitor the competitiveness of our compensation programs. In fiscal 2023 more than 69% of our employees received market-based wage adjustments.

Codes of Conduct; Oversight of Concerns: We maintain codes of conduct and ethics policies designed to promote ethical conduct of our employees and agents. We have also implemented a robust program to address employee concerns and complaints, which includes an anonymous incident reporting system, periodic employee surveys and suggestion boxes that can result in monetary awards. Our employees are made aware of such reporting system through various communication methods, including assurances against retaliation. We regularly monitor best practices in this area to ensure our policies and practices are updated as appropriate.

(x) Seasonality

Our business is seasonal. Demand for peanut and tree nut products is highest during the last four months of the calendar year. Peanuts, pecans and walnuts, three of our principal raw materials, are primarily purchased between September and February and are processed throughout the year until the following harvest. As a result of this seasonality, our personnel requirements rise during the second quarter of our fiscal year. Our working capital requirements generally peak during the third quarter of our fiscal year.

(xi) Government Regulations, Operating Hazards and Uninsured Risks

The sale of food products for human consumption involves the risk of injury to consumers as a result of product contamination or spoilage, including the presence of shell fragments, foreign objects, insects, foreign substances, pathogens, chemicals, mycotoxins and other hazards, or agents or residues introduced during the growing, storage, handling or transportation phases. We (i) maintain what we believe to be rigid quality control standards and food safety systems that is evident in our annual Safe Quality Food ("SQF") certification at each manufacturing facility; (ii) generally inspect our nut and other food products by visual examination, screening, metal detectors or electronic monitors at various stages of our shelling and processing operations; (iii) work with the United States Department of Agriculture ("USDA") in its inspection of peanuts shipped to and from our peanut shelling facilities; (iv) maintain robust environmental pathogen programs; (v) seek to comply with the Nutrition Labeling and Education Act by labeling each product that we sell with labels that disclose the nutritional value and content of each of our products and (vi) assure compliance with the United States Food and Drug Administration ("FDA") Food Safety Modernization Act ("FSMA") through our comprehensive Food Safety Plans which include following Current Good Manufacturing Practices and control biological, chemical and physical hazards through our Process, Sanitation, Allergen and Supply Chain Preventive Controls. However, no assurance can be given that some nut or other food products sold by us may not contain or develop harmful substances. In order to mitigate this risk, we strive to select high-quality nut and ingredient suppliers as well as maintain product liability and contaminated product insurance at amounts we believe are adequate in light of our operations. A portion of our annual capital expenditure budget is allocated for compliance with government-mandated food safety standards. Compliance with food safety standards and other government regulations may have an impact on our operations and earnings, particularly if we fail to satisfy such standards or regulations and our products are recalled, harm our consumers or harm our Company's reputation and standing as a leader of branded and private brand nut and snack products. See Part I, Item 1A — "Risk Factors".

Item 1A — Risk Factors

We face a number of significant risks and uncertainties, and therefore, an investment in our Common Stock is subject to risks and uncertainties. The factors described below could materially and adversely affect our business, results of operations and financial condition. While each risk is described separately, some of these risks are interrelated and it is possible that certain risks could trigger the applicability of other risks described below. Also, the risks and uncertainties described below are not the only ones that we face. Additional risks and uncertainties not presently known to us or risks we view as not rising to the level of being material, could also potentially impair our business, results of operations and financial condition. Investors should consider the following factors, in addition to the other information contained in this Annual Report on Form 10-K, including Part II, Item 7 — “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources” before deciding to purchase our Common Stock.

Industry Risks

We Cannot Control the Availability or Cost of Raw Materials and this May Have a Material Adverse Effect on Our Results of Operations, Cash Flows and Financial Condition

The availability and cost of raw materials for the production of our products, are subject to crop size and yield fluctuations caused by factors beyond our control. These materials include peanuts, pecans, almonds, cashews, walnuts, pine nuts and other nuts, dried fruits and seeds, as well as vegetable oils and other products used in the manufacture of our products. The factors beyond our control include adverse weather conditions, natural disasters (including floods, droughts, frosts, earthquakes and hurricanes), changing climate patterns, plant diseases, foreign currency fluctuations, trade agreements, tariffs and embargos, import/export controls, prices of other crops, labor shortages, inflationary conditions, political change and unrest, sanctions, armed hostilities, such as those in Ukraine, changes in global customer demand, pandemics and disease, changes in government agricultural programs, federal and state government mandates related to the preceding or otherwise and purchasing behavior of certain countries, including China and India. Additionally, any determination by the USDA or other government agencies may also reduce the supply of edible nuts and other raw materials used in our products and could (among other things) cause our costs to increase significantly. These determinations include, but are not limited to, that certain pesticides, herbicides or other chemicals used by growers have left harmful residues on portions of the crop, negatively impact the environment, cause or may cause adverse health consequences, any portion of the crop has been contaminated by aflatoxin or other agents, or any future raw material or product recalls for other reasons.

Because these raw materials are commodities, their prices are set by the market and can therefore fluctuate quickly and dramatically due to varied events, such as those described above. Furthermore, we are not able to hedge against changes in nut commodity prices because no appropriate futures, derivative or other risk-sharing market for these commodities exists nor can we create such a market. Consequently, in order to achieve or maintain profitability levels, we attempt to increase the prices of our products to reflect the increase in the costs of the raw materials that we use. However, we may not be successful in passing along partial or full price increases to our customers, if at all. In addition, even if we are successful in passing across partial or full price increases, we may not be able to do so in a timely fashion. Our ability to raise prices and the timing of any price increases is often dependent upon the actions of our competitors, some of whom are significantly larger and more diversified than we are or own farms which produce the raw materials. We have observed rapid inflation with respect to packaging and other products used to manufacture and package our products and general inflationary conditions that are difficult to predict, and we may not be able to pass along such inflationary increases to our customers or may not be able to do so in a timely fashion. Additionally, any such product price increase that we are able to pass along to our customers may ultimately reduce the demand for, and sales of, our products as customers reduce purchases, buy lower priced products or lower margin products. Alternatively, if the prices of any raw materials significantly decrease, and we have inventories of such materials on hand, we may be unable to reduce product prices without adversely impacting our gross margins. Any competitors who purchase such material on the open market or own the farms which produce the raw materials may be able to reduce prices in a more timely manner, and we could lose market share to such competitors. We are also subject to risks associated with purchasing a majority of our pecans, peanuts and walnuts directly from growers, including the risk of purchasing such products from growers at costs that later, due to altered market conditions, prove to be above prevailing market prices at time of sale. Accordingly, because we purchase a majority of our pecans, peanuts and walnuts directly from growers during harvest season and shell and process these nuts throughout our fiscal year, there is a possibility that, after we acquire these nuts, market conditions may change. Depending on these changing market conditions, we may be forced to sell these nuts at reduced prices relative to our acquisition cost. Any one or more of the foregoing aspects may have a material adverse effect on our results of operations, cash flows and financial condition.

Moreover, fluctuations in the market prices of nuts may affect the value of our inventories, margins and profitability. We enter into fixed price commitments with a portion of our commercial ingredient customers and certain other customers. The commitments are for a fixed period of time, typically three months to twelve months. Such commitments with a term of six months or more represented approximately 3% of our annual net sales in fiscal 2023. Sometimes we enter into fixed price commitments with respect to certain nut products before fixing our acquisition costs in order to maintain customer relationships or when, in management's judgment, market or crop harvest conditions so warrant. To the extent we do so and our fixed prices are not properly aligned with our acquisition costs, these fixed price commitments may result in reduced or negative gross profit margins, which could have a material adverse effect on our financial condition and results of operations.

We Operate in a Competitive Environment Which Could Materially and Adversely Affect our Financial Condition and Results of Operations

We operate in a highly competitive environment. The principal areas of competition are, among others, brand recognition, taste, flavor, quality, packaging, price, nutrition, advertising, promotion, convenience and service. Our principal products compete against food and snack products manufactured and sold by numerous regional, national and international companies, some of which are substantially larger and have greater resources than us, such as Hormel Foods Corp. (Planters brand). Most of our competitors that sell and market the other top branded snack nut products have committed more financial, marketing and other resources to such brands when compared to the resources available to or spent by us on our brands. Additionally, many food retailers, supercenters, mass merchandisers and internet retailers have continued to emphasize their own private label offerings as a key part of their strategy and may develop or expand their own private label nut and nut product offerings, to the exclusion of our branded products, particularly in an uncertain economic environment or due to inflationary conditions. Other smaller competitors may be able to focus on faster-growing, niche markets that we are unable to market effectively to or otherwise sell to due to our size, operations, marketing strategy or perceptions regarding our Company. Additionally, certain food retailers and internet retailers may seek to invest in companies serving certain niche markets and/or offer shelf space, added promotional activity or other marketing efforts in exchange for ownership in such companies, which we are unable to offer to such food retailers or internet companies. Recent consolidation and mergers and acquisitions activity in the nut and snack food market has resulted in price competition as part of such consolidation or mergers and acquisitions activity. Many of our competitors buy their nuts on the open market and are thus not exposed to the risks of purchasing inshell pecans, peanuts, walnuts and other nut types directly from growers at fixed prices that later, due to altered market conditions, may prove to be above prevailing market prices. We also compete with other shellers in the commercial ingredients market and with regional processors in the retail and wholesale markets. In order to maintain or increase our market share, we must continue to price our products competitively and spend on marketing, advertising, new product innovation and shelf placement and slotting fees. This may cause a decline in gross profit margin if we are unable to increase sales volume or otherwise reduce our costs, which could materially and adversely affect our financial condition and results of operations.

Significant Private Brand Competitive Activity Could Materially and Adversely Affect Our Sales and as a Result Our Financial Condition and Results of Operations

Some customer buying decisions, including some of our largest private brand customers, are based upon a periodic bidding process in which a single, successful bidder is assured the right to sell the selected product or products to the food retailer, supercenter, mass merchandiser or internet retailer until the next bidding process to the exclusion of other bidders. Our sales volume may decrease significantly if our bids are too high and we lose the ability to sell products through these channels, even temporarily. Alternatively, we risk reducing our margins if our bids are successful, but below our desired price points. In addition, our margins could be further reduced if commodity prices or other input prices subsequently rise and customers are unwilling or unable to accept price increases. The nut and snack food industry has experienced consolidation and significant mergers and acquisitions activity in recent years. If certain of our competitors elect to reduce prices in order to increase sales or market share, our market share could decrease and this could adversely affect our financial condition and results of operations.

Many food retailers, supercenters, mass merchandisers and internet retailers have sought to develop or expand their private brand offerings in recent years. Should any of our significant customers elect to introduce or expand their private brand programs, and we do not participate in such programs, including due to undesirable margins or selling prices, our sales volume and margins could be negatively impacted. This is because the private brand programs would directly compete against our branded products or exclude our private brand or branded products due to shelf space or other concerns. Any of these outcomes may materially and adversely affect our financial condition and results of operations.

Changing Consumer Preferences and Demand Could Materially and Adversely Affect Our Financial Condition and Results of Operations

Our financial performance depends in part on our ability to anticipate and offer products to our customers that appeal to their preferences. Consumer preferences can quickly change based on a number of factors beyond our control. These preferences may include, but are not limited to, preference for branded or private brand products, options to purchase such products and the format, and various quantity or volume sizes of such products. If we fail to anticipate, identify or react quickly to these changes and are unable to develop and market new and improved products or otherwise offer products that meet consumer preferences, demand for our products could suffer. In addition, demand for our products could be affected by consumer concerns regarding the labeling, packaging, manner of preparing our products or concerns with respect to the health effects of nutrients or ingredients in any of our products or the overall sustainability or impact of our products on the environment. The development and introduction of new products and packaging or alteration of existing products and packaging requires substantial research and development, testing and marketing expenditures, which we may be unable to recover fully if the new products do not achieve the necessary commercial success. New product introduction also results in increased costs, including from the use of new manufacturing techniques, capital expenditures, new raw materials and ingredients, additional labor and consulting expenses, development or revision of packaging and labeling and additional marketing and trade spending. Consumers are also purchasing food products with increasing frequency outside traditional retail supermarkets, including via the Internet. If we are unable to provide customers with our products outside traditional retail supermarkets, supercenters and club stores, demand for our products could suffer and/or we will be unable to grow our business. Reduction in demand as a result of changing consumer preferences or inability to provide consumers with products they demand, or in the manner they demand, could materially and adversely affect our financial condition and results of operations.

We are Subject to Customer Pricing Pressures and Retail Consolidation Trends Which Could Materially and Adversely Affect Our Financial Condition and Results of Operations

As the retail grocery trade continues to consolidate and our retail customers grow larger, become more sophisticated, use data for purchasing decisions and obtain more purchasing power, our retail customers are demanding lower pricing, especially private brand customers, and increased free or discounted promotional programs. Further, these retail customers may begin to place a greater emphasis on the lowest-cost supplier in making purchasing decisions, especially during periods of increased or variable raw material acquisition costs or rapid inflation. An increased focus on the lowest-cost supplier could reduce the benefits of some of our competitive advantages, which include a focus on customer service, innovation, production capacity, category management and quality. As the retail environment consolidates, many customers are reducing inventories or focusing on a limited number of brands (often the number one or number two brand by market share) or a limited number of products or SKUs in making purchasing decisions. In addition, certain customers in the retail channel, such as dollar stores and other discount sellers, have become increasingly sophisticated and may demand similar pricing to retail grocery customers. As part of the retail consolidation trend, diversified companies with substantial Internet presences have increased their food offerings or purchased retail supermarkets to expand their grocery business, particularly as such companies focus on food delivery direct to consumers. Such companies have substantial pricing power and may focus on their products to the exclusion of our products. If we fail to respond to these trends, our sales volume growth could suffer, and it may become necessary to lower our prices and increase promotional support of our products. Any of these factors would materially and adversely affect our gross profit and gross profit margin and could materially and adversely affect our financial condition and results of operations.

Food Safety, Allergy and Product Contamination Concerns Could Have a Material Adverse Effect on Our Financial Condition and Results of Operations

If consumers in our principal markets lose confidence in the health or safety of nut products, particularly with respect to peanut and tree nut allergies, food borne illnesses, processes, ingredients and packaging used in the manufacturing process or other food safety matters, this could materially and adversely affect our financial condition and results of operations. Individuals with nut allergies may be at risk of serious illness or death resulting from the consumption of our nut products, including consumption of the products of our customers which in turn contain our products as an ingredient. Notwithstanding our existing food safety controls, we process peanuts and tree nuts on the same equipment, and there is no guarantee that our other products will not be cross-contaminated. Concerns generated by risks of peanut and tree nut cross-contamination and other food safety matters, including food borne illnesses, may discourage consumers from buying our products, cause production and delivery disruptions or result in product recalls. Product safety issues concerning the products we manufacture, distribute and sell, and also concerning similar products not manufactured, distributed or sold by us, may materially and adversely affect demand for products in the nut industry as a whole, including products without actual safety problems. Decreases in demand for products in the industry generally could have a material adverse effect on our financial condition and results of operations. In addition, the cooling system at our Elgin, Illinois facility utilizes ammonia. If a leak in the system were to occur, there is a possibility that the inventory in cold storage at our Elgin, Illinois facility could be destroyed which could have a material adverse effect on our financial condition and results of operations.

Product Liability, Product Recalls, Product Labeling and Product Advertising Claims May Have a Material Adverse Effect on Our Results of Operations and Cash Flows

We face risks associated with product liability claims, product recalls and other liabilities in the event: (i) our food safety and quality control procedures are ineffective or fail, (ii) we procure products or packaging from third parties that are or become subject to a recall, regardless of whether or not our food safety and quality control procedures are ineffective or fail, (iii) our products or packaging cause injury or become adulterated or misbranded, (iv) our products are determined to be promoted or labeled in a misleading fashion or do not contain required labeling or notices, (v) government authorities test our products and determine that they contain a contaminant or present a food safety risk, (vi) our products are tampered with, (vii) one of our competitors is subject to claims, recalls or other liabilities involving products similar to ours or (viii) federal, state or other government agencies or courts determine that our products could pose health risks or contain potentially harmful chemicals or other substances. In recent years, the food industry has been a target of litigation over product labeling and advertising, including nut products. Such litigation results in significant costs to defend and resolve. In addition, we do not control the labeling of the products of our customers that contain our products as an ingredient. A product recall of a sufficient quantity or significant adverse publicity, a significant product liability judgment against us, a significant advertising-related liability or other safety concerns (whether actual or claimed) could impact our products in a number of ways. These impacts could include unavailability of our product for a period of time, re-labeling or re-packaging products, loss of consumer confidence in our products and exposure to liabilities in excess of any insurance we maintain for such events, including to our private label customers. As customers request revised and more sophisticated packaging, our packaging solutions may result in manufacturing defects or errors in the manufacture of such packaging, which could cause us to recall the products despite having proper food safety protocols. If these kinds of events were to occur, they would have a material adverse effect on the demand for our products, subject us to costly recalls or withdrawals, require us to spend significant amounts to change our operations to remedy such issues, and, consequently, could have a material adverse effect on our results of operations and cash flows.

Increased Production, Materials, Transportation and Insurance Costs Could Materially and Adversely Affect Our Financial Condition and Results of Operations

Our results are dependent on controlling a variety of costs. In the past we have experienced variability in transportation costs due to additional demand in shipping by a variety of market participants, a general shortage of drivers due to health and safety concerns, and increased fuel costs and federal regulations, which require increased monitoring of driving time using electronic monitoring technology. In addition to transportation costs, we have experienced (and may continue to experience) increased commodity or raw material costs, increased packaging material prices, higher general water, energy and fuel costs, increased labor costs as well as increased insurance costs, such as for property insurance. Maintaining the prices of our products, initiating price increases (including passing along price increases for commodities used in our products) and increasing the demand for our products (especially when prices for our products are decreasing due to commodity price decreases), all of which are important to our plans to increase profitability, may be materially and adversely affected or undermined by such increases in production and operation costs. Material and sustained increases in any of the foregoing costs could materially and adversely affect our financial condition and results of operations.

Technology Disruptions, Failures or Breaches, Hacking Activity, Ransomware Attacks or Other Cybersecurity Events Could Materially and Adversely Affect Our Financial Condition and Results of Operations

We depend on information technology to maintain and streamline our operations, including, among other things, (i) interfacing and communicating with our locations, customers and suppliers, (ii) complying with financial reporting, legal and tax regulatory requirements, (iii) maintaining logistics, inventory control and monitoring systems, (iv) providing us with real-time feedback about our business and (v) allowing continuity of operations when a significant number of our employees are working remotely. Like other companies, our information technology systems or information technology systems of our customers, vendors, counterparties and other third party providers may be vulnerable to a variety of interruptions due to events beyond our control, including natural disasters, terrorist attacks, government-sponsored or affiliated cyberattacks, telecommunications failures, outages during replacement or upgrades, computer viruses, phishing activity, hardware failures, cloud-based technology outages, power outages, hackers, social engineering attacks, loss or theft of hardware, ransomware attacks, cyber risks and other security issues. We have technology security initiatives, cyber insurance and disaster recovery plans in place to mitigate our risk to these vulnerabilities, but these measures may not be adequate, particularly as the global dependence on technology grows, the sophistication of cyber threats increase. Moreover, if we are unable to prevent security breaches or disclosure of non-public information, we may suffer financial and reputational damage, in addition to litigation or remediation costs or penalties because of the unauthorized disclosure of confidential information belonging to us or to our customers, consumers, or suppliers. If we were subject to a ransomware attack, we may be required to pay ransom in amounts that could be material to our financial condition.

In addition, we have outsourced several information technology support services and administrative functions to third-party service providers. We may outsource other functions in the future to achieve cost savings and efficiencies. If the service providers to which we outsource these functions do not perform effectively, we may not be able to achieve the expected cost savings and may have to incur additional costs to correct errors made by such service providers. Depending on the function involved, such errors may also lead to business disruption, processing inefficiencies, the loss of or damage to intellectual property through security breach, the loss of sensitive data through security breach, or otherwise. While we or any third-party service provider have not experienced any significant disruption, failure or breach impacting our information technology systems, any such disruption, failure or breach could adversely affect our financial condition and results of operations.

Increases in Labor Costs or Work Stoppages or Strikes Could Materially and Adversely Affect Our Financial Condition and Results of Operations

As the number of our employees has grown, personnel costs, including the costs of medical and other employee health and welfare benefits, have increased. These costs can vary substantially as a result of an increase in the number, mix and experience of our employees and changes in health care and other employment-related laws. There are no assurances that we will succeed in reducing future increases in such costs, particularly if government regulations require us to change our health and welfare benefits, government regulations impose additional monitoring and compliance expenses, or we need to attract and retain additional qualified personnel or provide extra compensation due to any lingering impacts of COVID-19 or any other pandemic or due to other reasons. Increases in personnel costs can also be amplified by low unemployment rates, increased inflation, our preferences among workers in the labor market and general tight labor market conditions in any of the areas where we operate. Our inability to control such costs could materially and adversely affect our financial condition and results of operations.

Although we consider our labor relations to be good, if a significant number of our employees engaged in a work slowdown, or other type of labor unrest, it could in some cases impair our ability to supply our products to customers. This event could result in reduced sales, and may distract our management from focusing on our business and strategic priorities. Any of these activities could materially and adversely affect our financial condition and results of operations.

The Impact of Changing Climate Patterns Could Materially and Adversely Affect Our Financial Condition and Results of Operation

We have observed a number of changing climate patterns in the U.S. and internationally. These changing climate patterns have caused weather patterns to change, and we have experienced severe droughts, floods, frosts, hurricanes, tornadoes, cold and warmer temperatures, adverse air conditions and other previously abnormal natural events. These weather events could impact the ability of our growers and producers to consistently provide us with the quality and quantity of nut and nut related products that we require, and in turn, cause the prices of certain nuts and raw materials to increase or change in unpredictable ways. Any long-term changes in climate patterns could prevent growers from growing or harvesting nuts in previous quantities, or at all, as many nut products require particular soil, water and climate conditions in order to grow or have acceptable yields. Because we (and our growers) cannot predict, change or insure against changing climate patterns, our ability to react to these changes is limited. If we and our growers and producers cannot adapt to changing climate patterns, our financial condition and results of operations could be materially and adversely affected.

We and our Customers, Suppliers and Transport Partners Face Various Risks Related to Epidemics, Pandemics and Similar Outbreaks of Infectious Diseases which May Have a Material Adverse Effect on our Business, Financial Condition, Liquidity and Results of Operations

The COVID-19 pandemic of 2020 and 2021 caused significant disruptions in both the U.S. and international economies, including in the geographic areas where our products are manufactured and sold, and the geographic areas from which our supply inputs are obtained.

Similar disease outbreaks in the future, may decrease demand for our products or certain of our products (or within certain distribution channels) due to limitations on the ability of consumers and other customers to purchase our products at retailers or other points of sale.

The COVID-19 pandemic of 2020 and 2021 had a significant adverse impact on economic activity and the gross domestic product in the United States and caused economic dislocations and resulted in significant inflation during the 2021 and 2022 calendar years. In particular, should inflation from the aftereffects of COVID-19 cause an increase (or further increase) in prices of our products or raw materials for our products, this may result in lower demand for our products or decreased margins and have a material adverse effect on our business and results of operations.

While our production facilities are essential businesses and have operated since 2020 without significant disruption, there is no guarantee that our current production operations (or current or customary production levels) will continue for our 2024 fiscal year and beyond if a new pandemic occurs. Our facilities are located in several different states and are subject to different governmental rules and regulations. The forced shutdown of any of our facilities (or our voluntary shutdown of our facilities due to unexpected circumstances) could result in (among other things) reduced or no production of our products or our inability to manufacture and package products, which could have a material adverse effect on our business, liquidity and results of operations.

While we continue to take precautions to ensure that our workforce can safely work from our facilities or remotely, we cannot guarantee that our workforce or the workforce of our customers, suppliers and transportation providers will not experience disruptions due to an outbreak of infectious disease. If a significant percentage of our workforce, or the workforce of our customers, suppliers or transportation providers, are unable to work because of illness, government restrictions or exposure to an infectious disease, our ability to manufacture, sell and transport our products could be materially impacted. In addition, if we have to incur (or further incur) additional or unexpected costs for the safety and protection of our employees or otherwise, materially increase compensation for certain employee groups, or incur costs related to work at home technology solutions, facilities cleaning or product transportation, such actions could materially affect our business, financial condition and results of operations.

Although our suppliers are currently providing us with adequate amounts of raw materials and packaging necessary to meet recent increased demand or customary demand levels, there is no guarantee that such suppliers will continue to do so in the future on the same terms or at all. In the past, we have observed certain countries instituting travel and activity restrictions which could have an impact on the size and number of certain nut crops and other raw materials. If we fail to obtain necessary raw materials and packaging, including if alternatives are not available, or the costs of raw materials or packaging materially increase in response to inflation, our business, financial condition and results of operations could be materially and adversely affected.

Business Risks

Negative Consumer Perception About Our Company, Our Values and Practices or our Branded or Private Brand Products Could Have a Material Adverse Effect on Our Financial Condition and Results of Operations

Our ability to develop, maintain and continually enhance consumer perceptions about our Company and our branded products is critical to improving our operating and financial performance. The value of our Company and our branded products is largely based on the degree to which consumers react and respond positively to our operations and our brands. Positive views of our Company and our brand value could diminish significantly due to a number of factors, including (i) consumer perception that we have acted in an irresponsible or reckless manner, (ii) negative perception about the actions or values of our Company, our management or large stockholders, (iii) adverse publicity about our products and Company operations (whether actual or fictitious), (iv) product recalls or failure to maintain the quality of our products, (v) the failure of our products to deliver consistently positive consumer experiences, (vi) concerns about food safety, allergies, or the availability of our products, (vii) concerns about the sustainability of our operations and products, or (viii) the actual impact or perceptions about the impact that our operations or products have on the environment. Customer, vendor, stockholder and government views on our sustainability and environmental practices and values can change quickly due to events beyond our control and we may not be able to effectively change or communicate our practices and values to avoid negative perceptions.

In addition, our success in enhancing the value of our Company and our branded products depends on our ability to adapt to a rapidly changing media environment. We increasingly rely on social media and online advertising campaigns as well as advertising outside of traditional print and television channels. Negative posts or comments (whether actual or fictitious) about us or the type of products we produce, market or sell on online social networks, product review sites, message boards or similar online activity could seriously impact consumer demand for our products. We are subject to a variety of legal and regulatory restrictions on how we market and advertise our products. These restrictions may limit our ability to respond as the media and communications environment continues to evolve. If we do not react appropriately or effectively, then our product sales, financial condition and results of operations could be materially and adversely affected.

We are Dependent Upon Certain Significant Customers Which Could Materially and Adversely Affect Our Financial Condition, Cash Flows and Results of Operations

We are dependent on a few significant customers for a large portion of our total net sales, particularly in the consumer channel. Sales to our five largest customers represented approximately 64%, 63% and 61% of net sales in fiscal 2023, fiscal 2022 and fiscal 2021, respectively. There can be no assurance that all significant customers will continue to purchase our branded or private brand products in the same quantities, same product mix or on the same terms as in the past, particularly as increasingly powerful retailers demand lower pricing, different packaging, larger marketing support or payments for retail space, establish private brands or request other terms of sale which negatively impact our profitability or sales. Many of our largest customers emphasize sales at physical locations and a significant shift to Internet sales may impact the amount and types of products they purchase from us. A loss of one of our largest customers, a material decrease in purchases by one of our largest customers, the inability to collect a receivable from or a

significant business interruption at one of our largest customers would result in decreased sales and would materially and adversely affect our results of operations, financial condition and cash flows.

We are Dependent on Certain Key Personnel and the Loss of Any of Their Services or Our Inability to Attract, Retain and Motivate a Qualified and Diverse Workforce Could Have a Material Adverse Effect on Our Results of Operations

Our future success will be largely dependent on the personal efforts of our senior operating management team. We believe that the expertise and knowledge of these key members of management in the industry, and in their respective fields, is a critical factor to our growth and success. Although some of our officers own significant amounts of our Class A Stock, these individuals have not entered into any employment or non-compete agreements with us, nor do we have key officer insurance coverage policies in effect. The departure of any of these individuals or their inability to perform their duties due to illness, disability, injury or other similar events could have a material adverse effect on our business and prospects and that in turn would have a material adverse effect on our results of operations. Our success is also dependent upon our ability to attract, retain and motivate a qualified and diverse workforce, and there can be no assurance that we will be able to do so, particularly during times of increased labor costs or labor shortages.

Our Products are Processed at a Limited Number of Production Facilities and any Significant Disruption at any of Our Production Facilities or Disruption with a Third-Party Supplier Could Have a Material Adverse Effect on Our Financial Condition and Results of Operations

Our products are shelled, manufactured or otherwise processed at our various production facilities. However, certain nut and nut-related products, including the shelling of peanuts, walnuts and pecans and processing and packaging of certain other products, are conducted only at a single location. If any of these production facilities experience a disruption for any reason, including a work stoppage, power failure, fire, pandemic, terrorism, cyberattack, labor event or weather or climate related condition or natural disaster, this could result in a significant reduction or elimination of the availability of some of our products. In addition, a dispute with, or disruption at, a significant third-party supplier, service provider, distributor or customer may impact our ability to produce, package, market, transport and sell our products. If we were not able to obtain alternate production, shelling or processing capability in a timely manner or on satisfactory terms, this could have a material adverse effect on our financial condition and results of operations.

Unsuccessful Implementation of Our Long-Range Plan Could Materially and Adversely Affect Our Financial Condition and Results of Operations

We developed a strategic plan (the “Long-Range Plan”), to clarify our future growth priorities, diversify our product line and help us achieve long-term profitable growth. As part of this Long-Range Plan, we have taken (or will take) a number of actions including, among other things, promotion of our branded recipe and snack nut products, expanding distribution in traditional retail channels and alternative channels and other strategies related to increasing sales of non-branded business at existing key customers. In addition to these actions, we intend to improve our research and development and marketing capabilities to improve the quality, innovation, manufacture and sales of our products. We have launched, and will launch in the future, products and projects to improve our branded and private brand product portfolio, which may require significant capital expenditures, consulting and employee costs, research and development expenses and related product manufacturing expenses. There are no assurances that we will be successful in achieving any portion of our Long-Range Plan, including the development of any aspect of our branded or private brand business, or any other efficiency measures.

In addition, as part of our Long-Range Plan, we may engage in strategic acquisitions and joint ventures. As part of our Long-Range Plan, we have and intend to make capability related acquisitions and investments in and enter into strategic relationships with growth-stage companies to take advantage of our manufacturing and supply chain expertise and diversify our product line. However, we may be unsuccessful in managing completed acquisitions, joint ventures, or investments; identifying additional acquisitions or joint ventures, or negotiating favorable financial or other terms with third parties which are attractive or advantageous to grow or otherwise supplement our existing business. In addition, the identification, negotiation and completion of any acquisition, joint venture, or investment may divert management’s attention from ordinary business matters, require a number of one-time or ongoing advisory costs, result in the loss of employees or customers of our business or the acquired business, involve the assumption of unknown and potentially significant liabilities or result in impairment charges or write-downs if the assumptions underlying the purchase are not satisfied or operating performance suffers. Due to various uncertainties inherent in such activities, we may be unable to achieve a substantial portion of any anticipated benefits or cost savings from previous acquisitions, joint ventures, or investments or other anticipated benefits in the timeframe we anticipate, or at all.

Any inability to realize the anticipated benefits from the Long-Range Plan could materially and adversely affect our financial condition and results of operations.

Regulatory and Legal Risks

We are Subject to Government Regulation Which Could Materially and Adversely Affect Our Results of Operations

We are subject to extensive regulation by the FDA, the USDA, the United States Environmental Protection Agency (“EPA”) and other state, local and foreign authorities in jurisdictions where our products are manufactured, processed or sold. We are also subject to California’s Proposition 65, which requires that clear and reasonable warnings be given to consumers who are exposed to certain chemicals deemed by the state of California to be dangerous. Among other things, these regulations govern the manufacturing, importation, processing, packaging, storage, distribution, advertising and labeling of our products. Our manufacturing and processing facilities and products are subject to periodic compliance inspections by federal, state, local and foreign authorities. We are also subject to environmental regulations governing the discharge of air emissions, water and food waste, the usage and storage of pesticides, and the generation, handling, storage, transportation, treatment and disposal of waste materials. Amendments to existing statutes and regulations, adoption of new statutes and regulations, increased production at our existing facilities as well as our expansion into new operations and jurisdictions may require us to obtain additional licenses and permits and could require us to adapt or alter methods of operations at costs that could be substantial. Due to changing climate patterns and concerns over the environmental impact or sustainability of our products, we may be subject to additional governmental regulations focused on how we produce or source raw materials for our products. Compliance with applicable laws and regulations may be time-consuming, expensive or costly to us in different ways and could materially and adversely affect our results of operations. Failure to comply with applicable laws and regulations could subject us to civil remedies, including fines, injunctions, recalls or seizures, as well as possible criminal sanctions, or other litigation and claims, which could materially and adversely affect our results of operations.

Specifically, governmental policies affecting the agricultural industry, such as taxes, tariffs, duties, subsidies, incentives and import and export restrictions on agricultural commodities and commodity products, can influence the planting, location and size of certain crops, whether commodity products are traded, the volume and types of imports and exports, and the viability and volume of production of certain of our products. In addition, international trade disputes, sanctions and armed hostilities can adversely affect commodity trade flows by limiting or disrupting trade between countries or regions. Future government policies may adversely affect the supply of, demand for, and prices of our products, restrict our ability to do business in its existing and target markets, and negatively impact our revenues and operating results.

The FSMA gives the FDA expanded authorities over the safety of the national food supply, including increased inspections and mandatory recalls, as well as stricter enforcement actions, each of which could result in additional compliance costs and civil remedies, including fines, injunctions, withdrawals, recalls or seizures and confiscations. The FSMA further instructed the FDA to develop new rules and regulations, including the performance of hazard analyses, implementation of preventive plans to control hazards, and foreign supplier verification provisions. We currently have “hazard analysis and critical control points” (“HACCP”) procedures in place that may appropriately address many of the existing or future concerns as a result of FSMA. HACCP is a management system in which food safety is addressed through the analysis and control of hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product.

We are a publicly traded company and subject to changing rules and regulations of federal and state governments as well as other regulatory entities. These entities, including the Public Company Accounting Oversight Board, the SEC, the Department of Justice and the Nasdaq Global Select Market, have issued a significant number of new and increasingly complex requirements and regulations over the last several years and continue to develop additional regulations and requirements in response to laws enacted by Congress or otherwise. In addition, many states are enacting laws and issuing rules and regulations that may conflict with the laws of other states or require specific actions in response to those laws, rules and regulations. Our efforts to comply with these requirements have resulted in, and are likely to continue to result in, an increase in expenses and a diversion of management’s time from other business activities. Failure to comply with any law or regulation could subject us to civil or criminal remedies, including fines and injunctions, which could materially and adversely affect our results of operations.

Operational, Legal, Economic, Political and Social Risks of Doing Business in International Markets and Other Foreign Countries May Have a Material Adverse Effect on Our Results of Operations

Approximately 31% of the dollar value of our total nut purchases for fiscal 2023 were made from foreign countries. We purchase our cashews from Vietnam and certain West African countries and some of our pecans from Mexico. We also purchase sunflower oil and certain other ingredients that are sourced from Ukraine. To this extent, we are exposed to various risks inherent in international markets, including increased governmental ownership and regulation of the economy, greater likelihood of inflation and adverse economic conditions, governmental attempts to control inflation, such as setting interest rates and maintaining wage and price controls, supply reduction into the United States from increased demand in foreign countries, international competition, compliance with, and subjection to, foreign laws, including our ability to protect our intellectual property, such as our brands, compliance with U.S. laws and regulations related to conduct in foreign countries, such as the Foreign Corrupt Practices Act, currency exchange rates, potential for contractual defaults or forced renegotiations on purchase contracts with limited legal recourse, foreign countries' response to the aftereffects of COVID-19, tariffs, quotas, duties, import and export restrictions, sanctions, armed hostilities and other barriers to trade that may reduce our profitability or sales and civil unrest, armed hostilities and significant political instability.

The existence of risks in international markets and other foreign countries could jeopardize or limit our ability to purchase sufficient supplies of cashews, pecans and other imported raw materials and limit our ability to make international sales, and may materially and adversely affect our results of operations by increasing the costs of doing business overseas.

Litigation Could Materially and Adversely Affect Our Financial Condition and Results of Operations

We have been the subject of litigation and investigations in the past, and we may become the subject of litigation and investigations in the future, which may include lawsuits or claims related to contracts, intellectual property, product recalls, product liability, the marketing and labeling of products, employment matters, wage and hour matters, environmental matters, debt obligations or other aspects of our business. Plaintiffs or regulatory bodies could seek recovery of very large or indeterminate amounts, and the magnitude of the potential loss relating to lawsuits and investigations is difficult to estimate accurately. Additionally, many of our customer contracts require us to indemnify and assume the defense of any third-party claim against the customer, increasing the risk of litigation related to our operations or products. Regardless of whether any claims against us are valid, or whether we are ultimately held liable, such litigation and investigations may be expensive to defend and may divert time, money and management attention away from our operations and negatively impact our financial performance. We maintain insurance in amounts we believe to be adequate based on our business operations. However, we may incur claims or liabilities for which we are not insured, that exceed the amount of our insurance coverage or that our insurers may raise various objections and exceptions to coverage. A judgment or settlement for significant monetary damages or requiring other significant changes to our business or assets could materially and adversely affect our financial condition and results of operations. Any adverse publicity resulting from allegations or investigations may also adversely affect our reputation and the reputation of our products, which in turn could materially and adversely affect our financial condition and results of operations or result in serious and adverse operational consequences.

Inability to Protect Our Intellectual Property or Avoid Intellectual Property Disputes Could Materially and Adversely Affect Our Financial Condition and Results of Operations

We consider our intellectual property rights, particularly and most notably our brand trademarks (such as our *Fisher*, *Orchard Valley Harvest*, *Squirrel Brand*, *Southern Style Nuts* and *Just the Cheese* trademarks), but also our patents, trade secrets, know-how copyrights and licensing agreements, to be a significant and valuable aspect of our business. We attempt to protect our intellectual property rights through a combination of patent, service mark, trademark, copyright and trade secret laws, as well as licensing agreements, third-party nondisclosure and assignment agreements and policing of third-party misuses of our intellectual property both domestically and internationally. Our failure to obtain or adequately protect our trademarks, products, new features of our products, or our trade secrets and technology, or any change in law or other changes that serve to lessen or remove the current legal protections of our intellectual property, may diminish our competitiveness and could materially and adversely affect our financial condition and results of operations.

In addition, we may be unaware of intellectual property rights of others that may cover some of our technology, brands or products. Any disputes regarding patents or other intellectual property could be costly and time-consuming and could divert the attention of our management and key personnel from our business operations. Third-party claims of intellectual property infringement might also require us to enter into costly license agreements. We also may be subject to significant damages or injunctions against development and sale of certain products if found to be liable for infringing activity. Any such activities could materially and adversely affect our financial condition and results of operations.

Financial Risks

Certain of Our Stockholders Possess a Majority of Aggregate Voting Power in the Company and Stockholders within The Sanfilippo Group Have Pledged Shares of their Class A Stock, Which May Make a Takeover or Change in Control More or Less Difficult and Could Materially and Adversely Affect Our Financial Condition and Results of Operations

As of August 23, 2023, Jeffrey T. Sanfilippo, Jasper B. Sanfilippo, Jr., Lisa A. Sanfilippo, John E. Sanfilippo and James J. Sanfilippo (the “Sanfilippo Group”) own or control Common Stock (one vote per share) and Class A Stock (ten votes per share on all matters other than the election of Common Stock directors) representing approximately a 50.6% voting interest in the Company. As of August 23, 2023, Michael J. Valentine (the “Valentine Group”) owns or controls Common Stock (one vote per share) and Class A Stock (ten votes per share on all matters other than the election of Common Stock directors) representing approximately a 23.8% voting interest in the Company. In addition, the Sanfilippo Group and the Valentine Group as holders of the Class A Stock are entitled to elect seven Class A Directors, which represents 70% of our entire Board of Directors. As a result, the Sanfilippo Group and the Valentine Group together are able to direct the election of a majority of the members to the Board of Directors. In addition, the Sanfilippo Group is able to exert certain influence on our business, or take certain actions, that cannot be counteracted by another stockholder or group of stockholders. The Sanfilippo Group is able to determine the outcome of nearly all matters submitted to a vote of our stockholders, including any amendments to our certificate of incorporation or bylaws. The Sanfilippo Group has the power to prevent or cause dividends, or a change in control or sale of the Company, which may or may not be in the best interests of other stockholders, and can take other actions that may be less favorable to other stockholders and more favorable to the Sanfilippo Group, subject to applicable legal limitations, which could materially and adversely affect our financial condition, results of operations and cash flows.

In addition, several stockholders within the Sanfilippo Group that beneficially own a significant interest in our Company have pledged shares of the Company’s Class A Stock that they own to secure loans made to them by financial institutions. Such pledges are by stockholders (trusts) rather than individual directors or officers. If a stockholder defaults on any of its obligations under these pledge agreements or the related loan documents, these banks may have the right to sell the pledged shares. Such a sale could cause our Company’s stock price to decline. Many of the occurrences that could result in a foreclosure of the pledged shares are out of our control and are unrelated to our operations. Because these shares are pledged to secure loans, the occurrence of an event of default could result in a sale of pledged shares that could cause a change of control of our Company, even when such a change may not be in the best interests of our stockholders, and it could also result in a default under certain material contracts to which we are a party, including an event of default under the Amended and Restated Credit Agreement dated as of May 8, 2023 by and among the Company, Wells Fargo Capital Finance, LLC, as arranger and administrative agent, and the lenders party to such credit agreement (the “Credit Facility”), which could materially and adversely affect our financial condition, results of operations and cash flows.

We Cannot Guarantee the Timing, Amount or Payment of Dividends

Although the Board of Directors has adopted a dividend policy under which the Company intends to pay a regular annual cash dividend on our Common Stock and Class A Stock, whether any such subsequent dividend (or any special dividend) is declared and the timing and amount thereof is subject to the discretion of the Board of Directors. Decisions of the Board of Directors in respect of dividends will be based on a variety of factors, including the cash flows, earnings and financial position of the Company as well as the borrowing availability and other restrictions under our Credit Facility. The Board of Directors is not required to declare dividends and amount of dividends is restricted under our Credit Facility and could be restricted under future financing or other arrangements. The Board of Directors will also regularly review and may modify or terminate our dividend policy. Accordingly, we cannot provide any assurances that our Company will pay annual or special cash dividends in the future, and if so, the amount or timing thereof. Any reduction in or elimination of our dividend policy or dividend payments could have a negative effect on the price of our Common Stock.

Impairment in the Carrying Value of Goodwill or Other Intangibles Could Result in the Incurrence of Impairment Charges and Negatively Impact our Financial Condition

At June 29, 2023, we had goodwill of \$11.8 million and other intangible assets of \$6.7 million, net. The net carrying value of goodwill represents the fair value of acquired businesses in excess of identifiable assets and liabilities as of the acquisition date (or subsequent impairment date, if applicable). The net carrying value of other intangibles represents the fair value of customer relationships, brand names, and other acquired intangibles as of the acquisition date (or subsequent impairment date, if applicable), net of accumulated amortization. Goodwill is not amortized but must be evaluated by management at least annually for impairment. Amortized intangible assets are evaluated for impairment whenever events or changes in circumstance indicate that the carrying amounts of these assets may not be recoverable. Impairments to goodwill and other intangible assets may be caused by factors outside our control, such as increasing competitive pricing pressures, lower than expected revenue and profit growth rates, changes in industry earnings multiples, changes in discount rates based on changes in cost of capital (interest rates, etc.) or the bankruptcy of a significant customer and could result in the incurrence of impairment charges and negatively impact our net worth.

The Way in Which We Measure Inventory May Have a Material Adverse Effect on Our Results of Operations

We physically acquire our inshell nut inventories of pecans, peanuts and walnuts from growers and farmers in large quantities at harvest times, which are primarily during the second and third quarters of our fiscal year, and receive nut shipments in bulk truckloads. The weights of these nuts are measured using truck scales at the time of receipt, and inventories are recorded on the basis of those measurements. The nuts are then stored in bulk in large warehouses to be shelled or processed throughout the year. Bulk-stored nut inventories are relieved on the basis of continuous high-speed bulk weighing systems as the nuts are shelled or processed or on the basis of calculations derived from the weight of the shelled nuts that are produced. While we perform various procedures periodically to confirm the accuracy of our bulk-stored nut inventories, these inventories are estimates that must be periodically adjusted to account for positive or negative variations in quantities and yields, and such adjustments directly affect earnings. The quantities of each crop year bulk-stored nut inventories are generally shelled out over a ten to fifteen-month period, at which time revisions to any estimates, which historically averaged less than 1.0% (but it cannot be guaranteed to continue under this level) of inventory purchases, are also recorded. The precise amount of our bulk-stored nut inventories is not known until the entire quantity of the particular nut is depleted, which may not necessarily occur every year. Prior crop year inventories may still be on hand as the new crop year inventories are purchased. The majority of bulk-stored nut inventories at June 29, 2023 will be processed during the first half of fiscal 2024 and any adjustment to our bulk stored nut inventory quantity will be recorded at that time. There can be no assurance that any bulk stored nut inventory quantity adjustments will not have a material adverse effect on our results of operations in the future.

Item 1B — Unresolved Staff Comments

None.

Item 2 — Properties

We own or lease four principal production facilities. Our primary processing and distribution facility is located at our Elgin, Illinois site which also houses our primary manufacturing operations and corporate headquarters (the “Elgin Site”). The remaining principal production facilities are located in Bainbridge, Georgia; Selma, Texas and Gustine, California. In addition, we operate a retail store at the Elgin Site.

As described below in Part II, Item 7 — “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources”, the Mortgage Facility (as defined below) was secured by mortgages on essentially all of our owned real property located in Elgin, Illinois and Gustine, California, but such mortgages have been released in connection with the maturity and repayment of such facility in fiscal 2023.

We believe that our facilities are generally well maintained and in good operating condition.

a. Principal Facilities

The following table provides certain information regarding our principal facilities:

Location	Square Footage	Type of Interest	Description of Principal Use	Date Company Constructed, Acquired or First Occupied
Bainbridge, Georgia	300,000	Owned and Leased	Peanut shelling, purchasing, processing, packaging, warehousing and distribution	1987
Selma, Texas ⁽¹⁾	300,000	Leased	Pecan shelling, processing, bulk packaging, warehousing and distribution	1992
Gustine, California	215,000	Owned	Walnut shelling, processing, packaging, warehousing and distribution	1993
Elgin, Illinois ⁽²⁾ (Elgin Office Building)	400,000	Owned	Rental property	2005
Elgin, Illinois (Elgin Warehouse Building)	1,001,000	Owned	Processing, packaging, warehousing, distribution and corporate offices	2005

(1) The sale and lease back of the Selma properties to related party partnerships was consummated in fiscal 2007. See Note 8 — “Long-Term Debt” of the Notes to the Consolidated Financial Statements.

(2) The Elgin Office Building (part of the Elgin Site) was acquired in April 2005. Approximately 69% of the Elgin Office Building is currently vacant. Approximately 29% of the rentable area has not been built-out. The vacant portion of the office building may be leased to third parties; however, there can be no assurance that we will be able to lease the unoccupied space. Further capital expenditures will likely be necessary to fully lease the remaining space.

After the fire that occurred at our Garysburg facility during fiscal 2020, the Company decided to cease all operations permanently during fiscal 2021 and sell the facility. The property and remaining equipment were sold during the first quarter of fiscal 2022. See Note 19 — “Garysburg, North Carolina Facility” of the Notes to the Consolidated Financial Statements for additional information.

b. Manufacturing Capability, Utilization, Technology and Engineering

Our principal production facilities are equipped with modern processing and packaging machinery and equipment.

The Elgin Site was designed to our specifications with what we believe to be state-of-the-art equipment. The layout is designed to efficiently move products from raw storage to processing to packaging to distribution. The Elgin Site was designed to minimize the risk of cross contamination between tree nuts and peanuts. As currently configured, the Elgin Site can accommodate an increase in production capacity of 15% to 20% of our current capacity, however certain production lines are at full capacity, and finished good storage space is nearing full capacity during peak shipping periods. Additional storage and production space may be needed to fulfill any meaningful increases in future demand.

The Selma facility is used for our automated pecan shelling, packaging, bulk packaging, warehousing and distribution operations. The facility's pecan shelling production lines currently have the capacity to shell in excess of 90 million inshell pounds of pecans annually. During fiscal 2023, we processed approximately 34 million inshell pounds of pecans at the Selma facility. The quantity of pecans processed varies depending on the amount of inshell nuts purchased due to, among other things, commodity acquisition cost risk, the size and cost of the crop, the impact of international demand and expected demand based on our current sales forecast.

The Bainbridge facility is located in the largest peanut producing region in the United States and is used for peanut shelling and peanut butter production. This facility takes direct delivery of farmer stock peanuts and cleans, shells, sizes, inspects, blanches, roasts and packages them for sale to our customers. The production line at the Bainbridge facility is almost entirely automated and has the capacity to shell approximately 120 million inshell pounds of peanuts annually. During fiscal 2023, the Bainbridge facility shelled approximately 94 million inshell pounds of peanuts.

The Gustine facility is used for walnut shelling, pasteurization, processing, bulk packaging, warehousing and distribution. This facility has the capacity to shell in excess of 60 million inshell pounds of walnuts annually. During fiscal 2023, the Gustine facility shelled approximately 30 million inshell pounds of walnuts. The quantity of walnuts shelled will vary depending on the amount of inshell nuts purchased due to, among other things, commodity acquisition cost risk, the size and cost of the crop, the impact of international demand, and expected demand based on our current sales forecast.

The Bainbridge, Selma and Gustine facilities are equipped to handle the processing, packaging, warehousing and distribution, and in the case of our Bainbridge facility, the purchasing of nuts. Furthermore, at our Elgin Site, we process, package, warehouse and distribute nuts. We currently have more than sufficient capacity at our facilities to handle the aforementioned operations.

Item 3 — Legal Proceedings

We are a party to various lawsuits, proceedings and other matters arising out of the conduct of our business. Currently, it is management's opinion that the ultimate resolution of these matters will not have a material adverse effect upon our business, financial condition, results of operation or cash flows.

For a discussion of legal proceedings, investigations, settlements and other contingencies, see Note 10 — "Commitments and Contingent Liabilities" of the Notes to Consolidated Financial Statements in Part II, Item 8 of this Form 10-K.

Item 4 — Mine Safety Disclosures

Not applicable.

EXECUTIVE OFFICERS OF THE REGISTRANT

Pursuant to General Instruction G(3) of Form 10-K and Instruction 3 to Item 401(b) of Regulation S-K, the following executive officer description information is included as an unnumbered item in Part I of this Report in lieu of being included in the Proxy Statement for our annual meeting of stockholders to be held on November 2, 2023. Below are our executive officers as of August 23, 2023:

Jeffrey T. Sanfilippo, Chief Executive Officer, age 60 — Mr. Sanfilippo has been employed by us since 1991 and in November 2006 was named our Chief Executive Officer. Mr. Sanfilippo served as our Executive Vice President Sales and Marketing from January 2001 to November 2006. He served as our Senior Vice President Sales and Marketing from August 1999 to January 2001. Mr. Sanfilippo has been a member of our Board of Directors since August 1999. He served as General Manager West Coast Operations from September 1991 to September 1993. He served as Vice President West Coast Operations and Sales from October 1993 to September 1995, and Mr. Sanfilippo served as Vice President Sales and Marketing from October 1995 to August 1999. Mr. Sanfilippo is responsible for overseeing our Sales, Marketing, Food Safety and Human Resource departments.

Frank S. Pellegrino, Chief Financial Officer, Executive Vice President, Finance and Administration, and Treasurer, age 49 — Mr. Pellegrino has been employed by us since January 2007. In August 2021, Mr. Pellegrino was promoted to Chief Financial Officer. In August 2020, Mr. Pellegrino was promoted to Executive Vice President, Finance and Administration. Mr. Pellegrino served as our Senior Vice President, Finance from August 2012 to August 2020 and, in August 2016, he was appointed Treasurer. Mr. Pellegrino served as Vice President Finance and Corporate Controller from January 2009 to August 2012. He served as Corporate Controller from September 2007 to January 2009 and as Director of Accounting from January 2007 to September 2007. Previously, Mr. Pellegrino was Internal Audit Manager at W.W. Grainger, a business-to-business distributor. Prior to that, he was a Manager in the Assurance Practice of PricewaterhouseCoopers LLP. Mr. Pellegrino is responsible for our Accounting, Finance, Treasury, Legal and Tax functions, our Information Technology, Contract Packaging and Customer Solutions departments and Investor Relations.

Jasper B. Sanfilippo, Jr., Chief Operating Officer, President and Assistant Secretary, age 55 — Mr. Sanfilippo has been employed by us since 1991. In November 2006, Mr. Sanfilippo was named our Chief Operating Officer and President and, in May 2007, Mr. Sanfilippo was named our Treasurer and held that position until January 2009. Mr. Sanfilippo served as our Executive Vice President Operations, retaining his position as Assistant Secretary, which he assumed in December 1995 from 2001 to November 2006. Mr. Sanfilippo became a member of our Board of Directors in December 2003. He became our Senior Vice President Operations in August 1999 and served as Vice President Operations from December 1995 to August 1999. Prior to that, Mr. Sanfilippo was the General Manager of our Gustine, California facility beginning in October 1995, and from June 1992 to October 1995 he served as Assistant Treasurer and worked in our Financial Relations Department. Mr. Sanfilippo is responsible for overseeing our Plant Operations, as well as Commodity Procurement and Research and Development functions.

Julia A. Pronitcheva, Senior Vice President, Human Resources, age 47 — Ms. Pronitcheva has been employed by us since May 2011 when she started as our Benefits and Compensation Manager. In July 2013, she was promoted to Senior Total Rewards Manager. In August 2017, she was promoted to Human Resources Director. A year later, in June 2018, she was promoted to lead our Human Resources and Safety functions as Senior Human Resources Director. In January 2019, Ms. Pronitcheva was promoted to Vice President of Human Resources and in November 2022 to Senior Vice President of Human Resources. Previously, Ms. Pronitcheva was employed by Sheffield, Olson and McQueen, Inc., Uponor North America and SIRVA Worldwide Relocation & Moving Services. Ms. Pronitcheva is responsible for talent strategy and solutions that support employees and business objectives focused on growth and high-performing culture.

Michael J. Finn, Vice President, Corporate Controller, age 48 — Mr. Finn has been employed by us since November 2011 when he started as our Assistant Corporate Controller. In August 2021, Mr. Finn was promoted to Vice President, Corporate Controller, and in October 2021, he became the Principal Accounting Officer of the Company. In August 2018, Mr. Finn was promoted to Corporate Controller. He served as our Director, Financial Reporting and Tax from August 2014 to July 2018. Previously, Mr. Finn was Manager of External Reporting at Nalco Company. Prior to that, Mr. Finn was a Senior Manager in the Assurance Practice at BDO, LLP. Mr. Finn has been a Certified Public Accountant (CPA) since 2000. Mr. Finn is responsible for our Accounting, Financial Reporting, and Income Tax functions.

Gina M. Lakatos, Vice President, General Counsel and Secretary, age 40 — Ms. Lakatos has been employed by us since 2022. Previously, she served as the Vice President, General Counsel and Secretary for Sears Hometown Stores. Prior to that, she served as the General Counsel and Chief Operating Officer for Element Health. Prior to her roles as in-house counsel, Ms. Lakatos was a litigator in private practice, representing and advising clients in a wide variety of cases, including in the areas of products liability, business and commercial disputes, and employment actions. Ms. Lakatos is responsible for our Legal and Compliance functions.

RELATIONSHIPS AMONG CERTAIN DIRECTORS AND EXECUTIVE OFFICERS

Below are the relationships among certain directors and executive officers as of August 23, 2023:

Jeffrey T. Sanfilippo, Chief Executive Officer and a director of the Company, is (i) the brother of Jasper B. Sanfilippo, Jr., James J. Sanfilippo, John E. Sanfilippo and Lisa A. Sanfilippo and (ii) the cousin of Michael J. Valentine and James A. Valentine.

Jasper B. Sanfilippo, Jr., Chief Operating Officer, President and a director of the Company, is (i) the brother of Jeffrey T. Sanfilippo, James J. Sanfilippo, John E. Sanfilippo and Lisa A. Sanfilippo and (ii) the cousin of Michael J. Valentine and James A. Valentine.

James J. Sanfilippo, a director of the Company, is (i) the brother of Jasper B. Sanfilippo, Jr., Jeffrey T. Sanfilippo, John E. Sanfilippo and Lisa A. Sanfilippo and (ii) the cousin of Michael J. Valentine and James A. Valentine.

John E. Sanfilippo, a director of the Company, is (i) the brother of Jasper B. Sanfilippo, Jr., Jeffrey T. Sanfilippo, James J. Sanfilippo and Lisa A. Sanfilippo and (ii) the cousin of Michael J. Valentine and James A. Valentine.

Lisa A. Sanfilippo, a director of the Company, is (i) the sister of Jasper B. Sanfilippo, Jr., Jeffrey T. Sanfilippo, James J. Sanfilippo and John E. Sanfilippo and (ii) the cousin of Michael J. Valentine and James A. Valentine.

James A. Valentine, Senior Technical Advisor and a director of the Company, is (i) the brother of Michael J. Valentine and (ii) the cousin of Jasper B. Sanfilippo, Jr., Jeffrey T. Sanfilippo, James J. Sanfilippo, John E. Sanfilippo and Lisa A. Sanfilippo.

Michael J. Valentine, a director of the Company, is (i) the brother of James A. Valentine and (ii) the cousin of Jasper B. Sanfilippo, Jr., Jeffrey T. Sanfilippo, James J. Sanfilippo, John E. Sanfilippo and Lisa A. Sanfilippo.

PART II

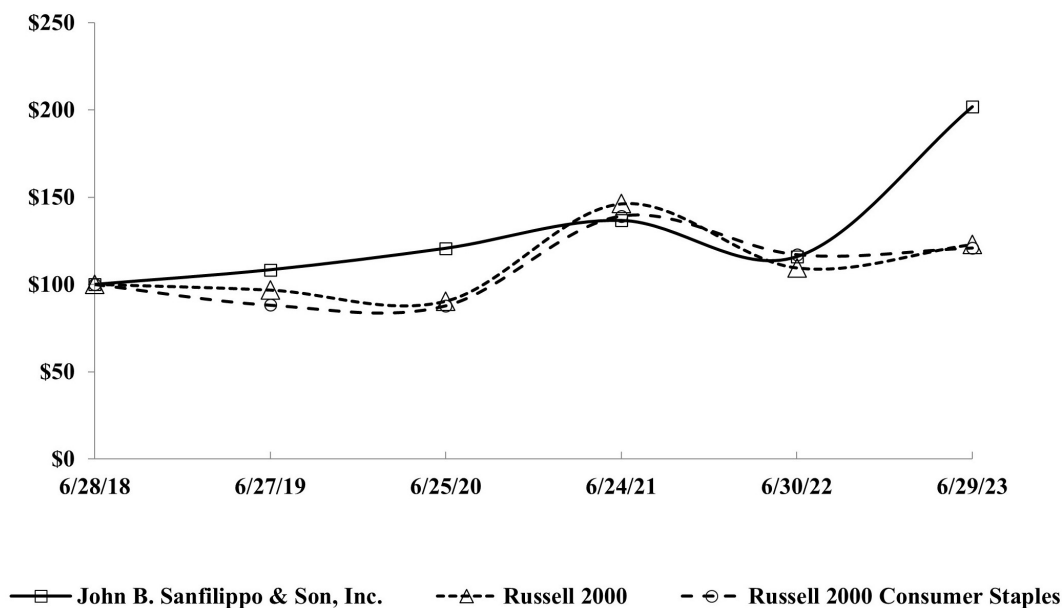
Item 5 — Market for Registrant’s Common Equity and Related Stockholder Matters

We have two classes of stock: Class A Stock and Common Stock. The holders of Common Stock are entitled to elect 25% of the total members of the Board of Directors, rounded up to the nearest whole number, and the holders of Class A Stock are entitled to elect the remaining directors. With respect to matters other than the election of directors or any matters for which class voting is required by law, the holders of Common Stock are entitled to one vote per share while the holders of Class A Stock are entitled to ten votes per share. Our Class A Stock is not registered under the Securities Act of 1933 and there is no established public trading market for the Class A Stock. However, each share of Class A Stock is convertible at the option of the holder at any time and from time to time (and, upon the occurrence of certain events specified in our Restated Certificate of Incorporation, automatically converts) into one share of Common Stock.

Our Common Stock is quoted on the NASDAQ Global Select Market and our trading symbol is “JBSS”.

The graph below compares our cumulative five-year total stockholder return on our Common Stock with the cumulative total returns of the Russell 2000 Consumer Staples Index and the Russell 2000 Index. The graph tracks the performance of a \$100 investment in our Common Stock, in each index (with the reinvestment of all dividends) from June 28, 2018 to June 29, 2023.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN*
Among John B. Sanfilippo & Son, Inc., the Russell 2000 Index,
and the Russell 2000 Consumer Staples Index



*\$100 invested on June 28, 2018 in stock or index, including reinvestment of dividends.

Indexes calculated on month-end basis.

The information contained in the preceding performance graph shall not be deemed to be “soliciting material” or to be “filed” with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (the “Exchange Act”), except to the extent that we specifically incorporate it by reference in such filing.

As of August 23, 2023 there were 42 holders and 16 holders of record of our Common Stock and Class A Stock, respectively.

Under our Restated Certificate of Incorporation, the Class A Stock and the Common Stock are entitled to share equally on a share for share basis in any dividends declared by the Board of Directors on our common equity. Our current financing agreements, as amended and restated on May 8, 2023, allow us to make up to four cash dividends or distributions of our stock in any fiscal year in an amount not to exceed \$75 million in the aggregate per fiscal year. See Part II, Item 7 — “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Financing Arrangements.”

In January 2017, our Board of Directors adopted a dividend policy under which it intends to pay a regular annual cash dividend on our Common Stock and Class A Stock. The Board of Directors contemplated that the regular annual dividend would be declared around the conclusion of the Company’s fiscal year and paid in the first quarter of each fiscal year. We have paid or declared an annual dividend each year since 2017.

The Board of Directors will review the dividend policy regularly and any future annual or special dividends (whether such are paid and, if so, the amount and timing of payment) will be at the discretion of the Board of Directors, after taking into account a variety of factors, including cash flows, borrowing availability under our Credit Facility, and earnings and financial position of the Company. There can be no assurance that dividends will be declared or paid in the future. Pursuant to our Restated Certificate of Incorporation, any dividends paid on our Common Stock must be equivalent to the dividends paid on our Class A Stock.

The frequency and amount of cash dividends declared for each class of common stock for the two most recently completed fiscal years and dividends declared as of the date of this Report are as follows:

- On July 8, 2021 our Board of Directors declared an annual and special cash dividend of \$0.70 and \$2.30, respectively, that was paid to holders of Common Stock and Class A Stock on August 25, 2021.
- On July 7, 2022 our Board of Directors declared an annual and special cash dividend of \$0.75 and \$1.50, respectively, that was paid to holders of Common Stock and Class A Stock on August 31, 2022.
- On November 3, 2022 our Board of Directors declared a special cash dividend of \$1.00 that was paid to holders of Common Stock and Class A Stock on December 21, 2022.
- On May 2, 2023 our Board of Directors declared a special cash dividend of \$1.50 that was paid to holders of Common Stock and Class A Stock on June 22, 2023.
- Subsequent to the end of fiscal 2023, the Board of Directors declared an annual and special cash dividend of \$0.80 and \$1.20, respectively, that will be paid to holders of our Common Stock and Class A Stock on September 13, 2023.

For purposes of the calculation of the aggregate market value of our voting stock held by non-affiliates as set forth on the cover page of this Report, we did not consider any of the siblings or spouses of Jasper B. Sanfilippo, Sr. or Mathias A. Valentine, or any of the lineal descendants of either Jasper B. Sanfilippo, Sr., Mathias A. Valentine or such siblings (other than those who are our executive officers, directors or those in the foregoing who have expressly formed a group within the meaning of Section 13(d)(3) of the Exchange Act) as an affiliate. See “Review of Related Party Transactions” and “Security Ownership of Certain Beneficial Owners and Management” contained in our Proxy Statement for the 2023 Annual Meeting and “Relationships Among Certain Directors and Executive Officers” appearing immediately before Part II of this Report.

Securities Authorized under Equity Compensation Plans

The following table sets forth information as of June 29, 2023, with respect to equity securities authorized for issuance pursuant to equity compensation plans previously approved by our stockholders and equity compensation plans not previously approved by our stockholders.

Equity Compensation Plan Information

Plan Category	(a) Number of securities to be issued upon exercise of options, warrants and rights	(b) Weighted average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in Column (a))
Equity compensation plans approved by stockholders — stock options	—	—	546,654
Equity compensation plans approved by stockholders — restricted stock units	155,012	—	546,654
Equity compensation plans not approved by stockholders	—	—	—

Item 6 — Selected Financial Data

The following historical consolidated financial data as of and for the years ended June 29, 2023, June 30, 2022, June 24, 2021, June 25, 2020 and June 27, 2019 was derived from our consolidated financial statements. The financial data should be read in conjunction with our audited consolidated financial statements and notes thereto, which are included elsewhere herein, and with Item 7 — “Management’s Discussion and Analysis of Financial Condition and Results of Operations”. The information below is not necessarily indicative of the results of future operations.

Consolidated Statement of Comprehensive Income Data: (dollars in thousands, except per share data)

	Year Ended				
	June 29, 2023	June 30, 2022	June 24, 2021	June 25, 2020	June 27, 2019
Net sales	\$ 999,686	\$ 955,868	\$ 858,482	\$ 880,092	\$ 876,201
Cost of sales	788,055	756,241	673,495	704,317	717,931
Gross profit	211,631	199,627	184,987	175,775	158,270
Selling and administrative expenses	121,407	112,190	99,809	97,228	99,746
Income from operations	90,224	87,437	85,178	78,547	58,524
Interest expense	2,159	1,921	1,441	2,005	3,060
Rental and miscellaneous expense, net	1,321	1,347	1,399	1,565	1,089
Pension expense (excluding service costs)	1,394	2,473	2,519	2,266	1,947
Income before income taxes	85,350	81,696	79,819	72,711	52,428
Income tax expense	22,493	19,909	20,078	18,601	12,962
Net income	<u>\$ 62,857</u>	<u>\$ 61,787</u>	<u>\$ 59,741</u>	<u>\$ 54,110</u>	<u>\$ 39,466</u>
Basic earnings per common share	\$ 5.43	\$ 5.36	\$ 5.19	\$ 4.72	\$ 3.45
Diluted earnings per common share	\$ 5.40	\$ 5.33	\$ 5.17	\$ 4.69	\$ 3.43
Cash dividends declared per share	\$ 4.75	\$ 3.00	\$ 5.00	\$ 6.00	\$ 2.55

Consolidated Balance Sheet Data: (dollars in thousands)

	June 29, 2023	June 30, 2022	June 24, 2021	June 25, 2020	June 27, 2019
Working capital	\$ 168,742	\$ 160,402	\$ 124,963	\$ 126,703	\$ 141,434
Total assets	425,287	447,262	398,455	407,457	391,304
Long-term debt, less current maturities	7,102	7,774	10,855	14,730	20,381
Total debt	7,774	51,362	23,383	47,023	27,719
Stockholders’ equity	292,207	278,821	242,494	238,238	254,555

Item 7 — Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis should be read in conjunction with the Consolidated Financial Statements and the Notes to Consolidated Financial Statements. Our fiscal year ends on the final Thursday of June each year, and typically consists of fifty-two weeks (four thirteen-week quarters). However, the fiscal year ended June 30, 2022 consisted of fifty-three weeks with our fourth quarter containing fourteen weeks. Additional information on the comparability of the periods presented is as follows:

- References herein to fiscal 2024 are to the fiscal year ending June 27, 2024.
- References herein to fiscal 2023, fiscal 2022 and fiscal 2021 are to the fiscal years ended June 29, 2023, June 30, 2022 and June 24, 2021, respectively.

As used herein, unless the context otherwise indicates, the terms “we”, “us”, “our” or “Company” collectively refer to John B. Sanfilippo & Son, Inc. and our wholly-owned subsidiary, JBSS Ventures, LLC.

We are one of the leading processors and distributors of peanuts, pecans, cashews, walnuts, almonds and other nuts in the United States. These nuts are sold under our *Fisher*, *Orchard Valley Harvest*, *Squirrel Brand* and *Southern Style Nuts* brand names and under a variety of private brands. We also market and distribute, and in most cases, manufacture or process, a diverse product line of food and snack products, including peanut butter, almond butter, cashew butter, candy and confections, snack and trail mixes, nutrition bars, snack bites, sunflower kernels, dried fruit, corn snacks, chickpea snacks, sesame sticks and other sesame snack products under our brand names and under private brands. In addition, with our December 2022 acquisition of the *Just the Cheese* brand (the “Acquisition”), we have expanded our product offerings to include baked cheese snack products on a branded and private label basis. We distribute our products in the consumer, commercial ingredients and contract packaging distribution channels.

During fiscal 2022, we created a Long-Range Plan to define our future growth priorities. Our Long-Range Plan focuses on growing our non-branded business across key customers, as well as transforming *Fisher*, *Orchard Valley Harvest* and *Squirrel Brand* into leading brands while increasing distribution and diversifying our portfolio into high growth snacking segments. We will execute on our Long-Range Plan by providing non-branded customer value-added solutions based on our extensive industry and consumer expertise with innovative products such as our newly developed product line of private brand nutrition bars which were introduced during the third quarter of fiscal 2023. We will grow our branded business by reaching new consumers via product expansion and packaging innovation, expanding distribution across current and alternative channels, diversifying our product offerings and focusing on new ways for consumers to buy our products, including sales via e-commerce platforms. This Long-Range Plan also contemplates increasing our sales through product innovation and targeted, opportunistic acquisitions, such as the acquisition of the *Just the Cheese* brand.

We will continue to focus our promotional and advertising activity to invest in our brands to achieve growth. We intend to execute an omnichannel approach to win in key categories including recipe nuts, snack nuts, trail mix and other snacking categories. We continue to see e-commerce growth across our branded portfolio and anticipate taking various actions with the goal of accelerating that growth across a variety of established and emerging platforms. We will continue to face the ongoing challenges specific to our business, such as food safety and regulatory issues and the maintenance and growth of our customer base for branded and private label products.

We face a number of challenges in the future, which include the impacts of ongoing inflation in food and other input prices, rising interest rates that reduce economic growth, potential for economic downturn in the markets in which we operate and continued supply chain challenges. We have also experienced a tightening in the labor market for those employed at our production facilities, which has led to increased labor costs.

Inflation and Consumer Trends

We face changing industry trends as consumers’ purchasing preferences evolve. Due to significant inflation, we have seen higher selling prices at retail. With higher prices across our categories and the broader food market, and also due to any actual or potential economic downturn, consumers may purchase fewer snack products. We have seen this through the decline in the recipe and snack nut categories during the 2023 fiscal year, as consumers shift their preferences to private brands or lower priced nuts or purchase snack products outside the nut and trail mix category. With the inflationary environment, we are also seeing signs of consumers shifting to more value-focused retailers, such as mass merchandising retailers, club stores and dollar stores, not all of which we distribute or sell to.

Supply Chain and Transportation

In the 2023 fiscal year, we have faced supply chain challenges related to material shortages, extended lead-times, supplier capacity constraints and inflationary pressures for freight, shipping pallets, packaging, vegetable oils and grains. While we do not have direct exposure to suppliers in Russia or Ukraine, our operations have been negatively impacted by increased inflation, energy and fuel prices. The conflict could continue to result in volatile commodity markets, supply chain disruptions and increased costs. Global supply chain pressures have eased, but we continue to see negative impacts related to macro-economics, geo-political unrest, growing political instability and climate-related events. Overall packaging and ingredient inflation appears to be leveling off but is expected to remain above historical levels. We anticipate pricing relief in some areas in the coming fiscal year, if and as shortages decrease and supply chains improve; however, we expect that some costs may remain above historical levels or unpredictable for a longer period.

We have seen stabilization in truckload capacity and volume at U.S. ports and improvements with driver hiring, there are still warehouse and dock staff shortages and fuel and energy concerns due to continued unrest abroad coupled with persistent inflation. Instability and prices in the transportation industry may increase in fiscal 2024 due to the bankruptcy of a major U.S.-based trucking company. Fuel prices that were at record highs during spring and summer 2022 have begun to decrease, yet still remain volatile. While there are indicators of transportation cost improvement, and despite our mitigation of some of the transportation shortages and maintaining high service levels, we may continue to face an unpredictable transportation environment. There is no guarantee that our mitigation strategies will continue to be effective, that any transportation capacity easing will continue or that transportation prices will return to more normalized levels.

We have remained agile by proactively identifying risks, modifying inventory plans and diversifying our supplier base to mitigate risk of customer order shortages. We will continue to proactively manage our business in response to the evolving global economic environment and related uncertainty. We continue to prioritize and take steps to mitigate impacts to our supply chain. If these supply chain pressures continue, or we cannot obtain the transportation and labor services needed to fulfill customer orders, such shortages and supply chain issues could have an unfavorable impact on net sales and our operations during in fiscal 2024. Additionally, as costs increase due to these issues or due to overall inflationary pressures, there is an additional risk of not being able to pass (in part or in full) such potential cost increases onto our customers or in a timely manner. If we cannot align costs with prices for our products, our operating performance could be adversely impacted.

Climate Change Impacts

Similar to other commodity dependent businesses, extreme weather events from climate change can have an unfavorable impact on our business. Floods, hurricanes, wildfires, tornadoes, blizzards, droughts, mudslides, poor air quality and extreme temperatures can affect our ability to obtain adequate (or acceptable quality) input fruit and nut material and manufacture products in our facilities. These extreme weather events can also have an adverse impact on the transportation industry and supply chains upon which we rely. Climate change can also result in unfavorable impacts that are unique to our business, especially for normal crop development. Below are some examples of essential weather conditions that must be present for normal development of the crops from which we derive the major raw materials we use in our products.

- Almonds, pecans and walnuts require a minimum of approximately 200, 250 and 700 chilling hours, respectively, during the winter to allow for an adequate amount of dormancy time so the trees can rest.
- Peanuts require adequate rainfall or access to water for irrigation for the period starting about 7 weeks after planting and ending about 15 weeks after planting.
- Cashews require a minimum of approximately 2,000 hours of sunlight per year. Sunlight is especially critical during the flowering period.
- Almonds require bees for pollination. For bees to pollinate effectively during the bloom period, temperatures cannot be less than about 55 degrees Fahrenheit, winds cannot exceed about 15 MPH, and there must be little or no rainfall during that period.
- Cranberries require adequate snow and ice coverage during the winter to protect vines from freezing.
- Raisins require hot days (about 93 – 100 degrees Fahrenheit) and cool nights (about 55 – 65 degrees Fahrenheit) during the growing season for optimum quality and sugar levels.

The non-occurrence of these weather conditions and other essential weather conditions can result in smaller crops, crop failures, or quality failures, which can lead to increased acquisition costs and supply shortages. Should climate changes significantly alter weather patterns, some of these needed input products may not be available at all, which would have a material adverse impact on our business.

Annual Highlights

- Our net sales for fiscal 2023 increased \$43.8 million, or 4.6%, to \$999.7 million compared to fiscal 2022.
- Gross profit increased \$12.0 million, while our gross profit margin, as a percentage of net sales, increased to 21.2% in fiscal 2023 from 20.9% in fiscal 2022.
- Total operating expenses for fiscal 2023 increased \$9.2 million, or 8.2%, to \$121.4 million. Operating expenses, as a percentage of net sales, increased to 12.1% compared to 11.7% of net sales in fiscal 2022.
- Diluted earnings per share increased approximately 1.3% compared to last fiscal year.
- Our strong financial position allowed us to pay cash dividends totaling \$54.9 million during fiscal 2023.
- The total value of inventories on hand at the end of fiscal 2023 decreased \$31.9 million, or 15.6%, in comparison to the total value of inventories on hand at the end of fiscal 2022. We have seen acquisition costs for all major tree nuts decrease and acquisition costs for peanuts increase modestly in the 2022 crop year (which falls into our 2023 fiscal year).

Results of Operations

The following table sets forth the percentage relationship of certain items to net sales for the periods indicated and the percentage increase or decrease of such items from fiscal 2023 to fiscal 2022 and from fiscal 2022 to fiscal 2021.

	Percentage of Net Sales			Percentage Change	
	Fiscal 2023	Fiscal 2022	Fiscal 2021	Fiscal 2023 vs. 2022	Fiscal 2022 vs. 2021
Net sales	100.0%	100.0%	100.0%	4.6%	11.3%
Gross profit	21.2	20.9	21.5	6.0	7.9
Selling expenses	7.7	8.0	7.3	(0.1)	22.0
Administrative expenses	4.5	3.9	4.3	18.4	2.4

Fiscal 2023 Compared to Fiscal 2022

Net Sales

Our net sales increased 4.6% to \$999.7 million for fiscal 2023 from \$955.9 million for fiscal 2022. The increase in net sales was primarily due to a 6.5% increase in the weighted average selling price per pound, slightly offset by a 1.8% decrease in sales volume, which is defined as pounds sold to customers. The increase in the weighted average selling price resulted from higher commodity acquisition costs for pecans, cashews, peanuts and dried fruit that were procured in the 2021 crop year. The decrease in sales volume resulted primarily from the fourth quarter of the prior year containing an extra week.

The following table summarizes sales by product type as a percentage of total gross sales. The information is based upon gross sales, rather than net sales, because certain adjustments from gross sales to net sales, such as promotional discounts, are not allocable to product type.

Product Type	Fiscal 2023	Fiscal 2022
Peanuts & Peanut Butter	19.0%	18.0%
Pecans	11.4	10.1
Cashews & Mixed Nuts	20.7	22.6
Walnuts	5.6	5.8
Almonds	8.8	10.2
Trail & Snack Mixes	27.2	26.9
Other	7.3	6.4
Total	100.0%	100.0%

The following table shows a comparison of net sales by distribution channel (dollars in thousands):

Distribution Channel	Fiscal 2023	Fiscal 2023 Percent of Total	Fiscal 2022	Fiscal 2022 Percent of Total	\$ Change	Fiscal 2023 to Fiscal 2022 Percent Change
Consumer ⁽¹⁾	\$ 785,646	78.6%	\$ 749,895	78.5%	\$ 35,751	4.8%
Commercial Ingredients	123,094	12.3	120,577	12.6	2,517	2.1
Contract Packaging	90,946	9.1	85,396	8.9	5,550	6.5
Total	\$ 999,686	100.0%	\$ 955,868	100.0%	\$ 43,818	4.6%

⁽¹⁾ Sales of branded products were approximately 21% and 22% of total consumer channel sales during fiscal 2023 and 2022, respectively. *Fisher* branded products were approximately 64% and 62% of branded sales during fiscal 2023 and 2022, respectively, with *Orchard Valley Harvest* branded products accounting for the majority of the remaining branded product sales.

Net sales in the consumer distribution channel increased \$35.8 million, or 4.8%, and sales volume decreased 1.9% in fiscal 2023 compared to fiscal 2022. The increase in net sales was primarily due to a 6.8% increase in weighted average sales price per pound. The sales volume decrease was primarily due to the fourth quarter of the prior year containing an extra week and lost private brand distribution at a grocery store retailer that occurred in the fourth quarter of fiscal 2022. Sales volume for *Fisher* snack nuts decreased 18.2% primarily due to decreased display activity and the negative impact on consumption resulting from increased sale prices at a major customer. Sales volume of *Orchard Valley Harvest* products increased 4.5% primarily driven by increased trade and promotional activity at a major customer in the non-food sector. Sales volume of *Southern Style Nuts* decreased 7.9% due to decreased promotional activity at a current club customer.

Net sales in the commercial ingredients distribution channel increased 2.1% in dollars and sales volume decreased 0.1% in fiscal 2023 compared to fiscal 2022.

Net sales in the contract packaging distribution channel increased 6.5% in dollars and sales volume decreased 3.2% in fiscal 2023 compared to fiscal 2022. The decrease in sales volume was primarily due to the fourth quarter of the prior year containing an extra week and decreased sales volume of peanut products to an existing major customer.

Gross Profit

Gross profit increased 6.0% to \$211.6 million in fiscal 2023 from \$199.6 million in fiscal 2022. The increase in gross profit was mainly due to a higher net sales base. Our gross profit margin, as a percentage of sales, increased to 21.2% for fiscal 2023 from 20.9% for fiscal 2022.

Operating Expenses

Total operating expenses for fiscal 2023 increased \$9.2 million to \$121.4 million. Operating expenses as a percent of net sales were 12.1% for fiscal 2023 compared to 11.7% for fiscal 2022.

Selling expenses for fiscal 2023 were \$76.8 million, an decrease of \$0.1 million, or 0.1%, over the amount recorded for fiscal 2022. The decrease was driven by a \$4.0 million decrease in freight expense due to a decreasing freight rates and fewer shipped sales pounds compared to fiscal 2022, and was largely offset by a \$2.7 million increase in compensation expense, a \$0.6 increase in sales broker commission expense and a \$0.5 million increase in sample expense related to a new product line.

Administrative expenses for fiscal 2023 were \$44.6 million, an increase of \$6.9 million, or 18.4%, from the amount recorded for fiscal 2022. The increase was due to a \$4.8 million increase in compensation expense, primarily incentive compensation, a \$1.0 million loss on an equity investment, a \$0.6 million increase in charitable food donations, and a \$0.5 million increase in audit and legal expenses primarily for Acquisition-related costs.

The \$2.3 million gain on sale of facility in fiscal 2022 was the result of the sale of our Garysburg, North Carolina facility.

Income from Operations

Due to the factors discussed above, income from operations was \$90.2 million, or 9.0% of net sales, for fiscal 2023, compared to \$87.4 million, or 9.1% of net sales, for fiscal 2022.

Interest Expense

Interest expense was \$2.2 million for fiscal 2023 compared to \$1.9 million for fiscal 2022. The increase in interest expense was due to higher weighted average interest rates.

Rental and Miscellaneous Expense, Net

Net rental and miscellaneous expense was \$1.3 million for both fiscal 2023 and fiscal 2022.

Pension Expense (Excluding Service Costs)

Pension expense (excluding service costs) was \$1.4 million for fiscal 2023 compared to \$2.5 million for fiscal 2022 primarily due to a reduction in the amortization of unrecognized net loss, due to the change in discount rate.

Income Tax Expense

Income tax expense was \$22.5 million, or 26.4% of income before income taxes (the "Effective Tax Rate"), for fiscal 2023 compared to \$19.9 million, or 24.4% of income before income taxes, for fiscal 2022. Our fiscal 2023 Effective Tax Rate is greater than fiscal 2022 due to an increase in state income tax expense related to both the settlement of a State of Illinois audit of fiscal 2019 and fiscal 2020 and the remeasurement of our state deferred tax assets due to a change in the blended state tax rate.

Net Income

Net income was \$62.9 million, or \$5.43 per common share basic and \$5.40 per common share diluted, for fiscal 2023, compared to \$61.8 million, or \$5.36 per common share basic and \$5.33 per common share diluted, for fiscal 2022, due to the factors discussed above.

Fiscal 2022 Compared to Fiscal 2021

The discussion of our results of operations for the fiscal year ended June 30, 2022 compared to the fiscal year ended June 24, 2021 can be found in Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Company's Annual Report on Form 10-K for the year ended June 30, 2022 and such discussion is incorporated by reference herein.

Liquidity and Capital Resources

General

The primary uses of cash are to fund our current operations, fulfill contractual obligations, pursue our Long-Range Plan through growing our branded and private label programs, return cash to our stockholders through dividends, repay indebtedness and pay amounts owed under the SERP (as defined below). Also, various uncertainties, including cost uncertainties, could result in additional uses of cash. The primary sources of cash are results of operations and availability under our Credit Facility. We anticipate that expected net cash flow generated from operations and amounts available pursuant to the Credit Facility will be sufficient to fund our operations for the next twelve months. Our available credit under our Credit Facility has allowed us to devote more funds to promote our products, increase consumer insight capabilities and promotional efforts, reinvest in the Company through capital expenditures, develop new products, pay cash dividends, consummate strategic investments and business acquisitions, such as the Acquisition, and explore other growth strategies outlined in our Long-Range Plan.

Cash flows from operating activities have historically been driven by net income but are also significantly influenced by inventory requirements, which can change based upon fluctuations in both quantities and market prices of the various nuts and nut products we buy and sell. Current market trends in nut prices and crop estimates also impact nut procurement.

The following table sets forth certain cash flow information for the last two fiscal years (dollars in thousands):

	June 29, 2023	June 30, 2022	2023 to 2022 \$ Change
Operating activities	\$ 124,655	\$ 19,604	\$ 105,051
Investing activities	(24,287)	(11,376)	(12,911)
Financing activities	(98,835)	(8,485)	(90,350)
Total change in cash	<u>\$ 1,533</u>	<u>\$ (257)</u>	<u>\$ 1,790</u>

Operating Activities. Net cash provided by operating activities was \$124.7 million in fiscal 2023, an increase of \$105.1 million compared to fiscal 2022. The increase in operating cash flow was primarily due to a decreased use of working capital for inventory compared to fiscal 2022 as a result of decreasing commodity acquisition costs. Inventories decreased \$31.9 million in fiscal 2023 compared to a \$56.9 million increase in inventories in fiscal 2022, which resulted in a favorable change in cash of \$88.8 million.

Total inventories were \$172.9 million at June 29, 2023, an decrease of \$31.9 million, or 15.6%, from the inventory balance at June 30, 2022. The decrease was primarily due to lower commodity acquisition costs for all major tree nuts and dried fruit input stocks and lower quantities of almonds on hand, which was partially offset by higher quantities of peanuts on hand at year end.

Raw nut and dried fruit input stocks, some of which are classified as work in process, increased 4.9 million pounds, or 11.1%, at June 29, 2023 compared to June 30, 2022. The weighted average cost per pound of raw nut and dried fruit input stocks on hand at the end of fiscal 2023 decreased by 24.3% compared to the end of fiscal 2022, primarily due to lower commodity acquisition costs for all major tree nuts and dried fruit input stocks.

As of June 29, 2023, there are known purchase obligations of \$355.7 million which are expected to be settled during fiscal 2024. These purchase obligations primarily represent inventory purchase commitments; however, these amounts exclude purchase commitments under walnut purchase agreements due to the uncertainty of pricing and quantity.

Additional contractual cash obligations include amounts owed for lease commitments and the payments to former officers under our Supplemental Employee Retirement Plan (“SERP”). We believe cash on hand, combined with cash provided by operations and borrowings available under the Credit Facility, will be sufficient to meet the cash requirements for all contractual cash obligations. See Note 4 — “Leases” and Note 15 — “Retirement Plan” of the Notes to Consolidated Financial Statements for additional information and future maturities.

Investing Activities. Cash used in investing activities was \$24.3 million in fiscal 2023. Capital expenditures accounted for a \$20.7 million use of cash in fiscal 2023. The \$3.5 million purchase price for the acquisition of the Just the Cheese brand also contributed to the increase in cash used for investing activities.

Cash used in investing activities was \$11.4 million in fiscal 2022. Capital expenditures accounted for a \$17.8 million use of cash in fiscal 2022, which was offset in part by \$4.0 million of net proceeds received from the disposition of the Garysburg, North Carolina facility and the \$3.2 million of cash proceeds resulting from the Sanfilippo family’s exercise of their contractual purchase option and our resulting sale of certain life insurance policies to the Sanfilippo family.

We expect total capital expenditures for equipment purchases and upgrades, facility maintenance and food safety enhancements for fiscal 2024 to be approximately \$22.0 million. Absent any material acquisitions or other significant investments, we believe that cash on hand, combined with cash provided by operations and borrowings available under the Credit Facility, will be sufficient to meet the cash requirements for capital expenditures.

Financing Activities. Cash used in financing activities was \$98.8 million during fiscal 2023. We paid dividends totaling \$54.9 million in fiscal 2023. We repaid \$3.2 million of long-term debt during fiscal 2023, \$2.5 million of which was related to the Mortgage Facility (as defined below). There was a net decrease in borrowings outstanding under our Credit Facility of \$40.4 million during fiscal 2023 primarily due to decreasing commodity acquisition costs and improved operating cash flows. See Note 7 — “Revolving Credit Facility” and Note 8 — “Long-Term Debt” of the Notes to Consolidated Financial Statements for additional information and future maturities.

Cash used in financing activities was \$8.5 million during fiscal 2022. We paid dividends totaling \$34.5 million in fiscal 2022. We repaid \$3.8 million of long-term debt during fiscal 2022, \$3.3 million of which was related to the Mortgage Facility. There was a net increase in borrowings outstanding under our Credit Facility of \$31.8 million during fiscal 2022 primarily due to increasing commodity acquisition costs.

Financing Arrangements

On February 7, 2008, we entered into the Former Credit Agreement (as defined below) with a bank group (the “Bank Lenders”) providing a \$117.5 million revolving loan commitment and letter of credit subfacility. Also on February 7, 2008, we entered into a Loan Agreement with an insurance company providing us with two term loans for an aggregate amount of \$45.0 million (as amended, the “Mortgage Facility”). The Mortgage Facility was repaid in full in the third quarter of fiscal 2023 and the related mortgages on our owned real property located in Elgin, Illinois and Gustine, California have been released.

Credit Facility

On March 5, 2020, we entered into an Amended and Restated Credit Agreement (the “Amended and Restated Credit Agreement”) which amended and restated our Credit Agreement dated as of February 7, 2008 (the “Former Credit Agreement”). The Amended and Restated Credit Agreement provides for a \$117.5 million senior secured revolving credit facility with the same borrowing capacity, interest rates and applicable margin as the Former Credit Agreement and extends the term of the Former Credit Agreement from July 7, 2021 to March 5, 2025.

The Amended and Restated Credit Facility is secured by substantially all of our assets other than machinery and equipment, real property and fixtures and matures on March 5, 2025.

On May 8, 2023, we entered into the First Amendment to our Credit Facility (the "First Amendment") which replaced the London interbank offered rate (LIBOR) interest rate option with the Secured Overnight Financing Rate ("SOFR"). The First Amendment updated the accrued interest rate to a rate based on SOFR plus an applicable margin based upon the borrowing base calculation, ranging from 1.35% to 1.85%.

At our election, borrowings under the Credit Facility currently accrue interest at either (i) a rate determined pursuant to the administrative agent’s prime rate plus an applicable margin determined by reference to the amount of loans which may be advanced under the borrowing base calculation, ranging from 0.25% to 0.75% or (ii) a rate based upon SOFR plus an applicable margin.

The terms of the Credit Facility contain covenants that, among other things, require us to restrict investments, indebtedness, acquisitions and certain sales of assets and limit annual cash dividends or distributions, transactions with affiliates, redemptions of capital stock and prepayment of indebtedness (if such prepayment, among other things, is of a subordinate debt). If loan availability under the borrowing base calculation falls below \$25.0 million, we will be required to maintain a specified fixed charge coverage ratio, tested on a monthly basis, until loan availability equals or exceeds \$25.0 million for three consecutive months. All cash received from customers is required to be applied against the Credit Facility. The Bank Lenders have the option to accelerate and demand immediate repayment of our obligations under the Credit Facility in the event of default on the payments required under the Credit Facility, a change in control in the ownership of the Company, non-compliance with the financial covenant or upon the occurrence of other defaults by us under the Credit Facility. As of June 29, 2023, we were in compliance with all covenants under the Credit Facility, and we currently expect to be in compliance with the financial covenant in the Credit Facility for the foreseeable future. At June 29, 2023, we had \$113.3 million of available credit under the Credit Facility. If this entire amount were borrowed at June 29, 2023, we would still be in compliance with all restrictive covenants under the Credit Facility.

Selma Property

In September 2006, we sold our Selma, Texas properties (the “Selma Properties”) to two related party partnerships for \$14.3 million and are leasing them back. The selling price was determined by an independent appraiser to be the fair market value which also approximated our carrying value. The lease for the Selma Properties has a ten-year term at a fair market value rent with three five-year renewal options. In September 2015, we exercised two of the five-year renewal options which extended the lease term to September 2026. The lease extension also reduced the monthly lease payment on the Selma Properties, beginning in September 2016, to reflect then current market conditions. At the end of each five-year renewal option, the base monthly lease amounts are reassessed, and the monthly payments increased to \$114 beginning in September 2021. One five-year renewal option remains. Also, we have an option to purchase the Selma Properties from the owner at 95% (100% in certain circumstances) of the then fair market value, but not less than the original \$14.3 million purchase price. The provisions of the arrangement are not eligible for sale-leaseback accounting and the \$14.3 million was recorded as a debt obligation. No gain or loss was recorded on the Selma Properties transaction. As of June 29, 2023, \$7.8 million of the debt obligation was outstanding.

Critical Accounting Policies and Estimates

Our financial statements are prepared in accordance with accounting principles generally accepted in the United States of America. The accounting policies as disclosed in the Notes to Consolidated Financial Statements are applied in the preparation of our financial statements and accounting for the underlying transactions and balances. The policies discussed below are considered by our management to be critical for an understanding of our financial statements because the application of these policies places the most significant demands on management's judgment, with financial reporting results relying on estimation regarding the effect of matters that are inherently uncertain. Specific risks, if applicable, for these critical accounting policies are described in the following paragraphs. For a detailed discussion on the application of these and other accounting policies, see Note 1 — "Significant Accounting Policies" of the Notes to Consolidated Financial Statements.

Preparation of this Annual Report on Form 10-K requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities at the date of our financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results may differ from those estimates. See "Forward-Looking Statements" below.

Revenue Recognition

The Company records revenue based on a five-step model in accordance with Accounting Standards Codification ("ASC") Topic 606. The core principle of the guidance is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for the goods or services. We sell our products under some arrangements which include customer contracts that fix the sales price for periods, which typically can be up to one year for some commercial ingredient customers. We also sell our products through specific programs consisting of promotion allowances, volume and customer rebates and marketing allowances, among others, to consumer and some commercial ingredient users. We recognize revenue as performance obligations are fulfilled, which occurs when control passes to our customers. We report all amounts billed to a customer in a sale transaction as revenue, including those amounts related to shipping and handling. We reduce revenue for estimated promotion allowances, volume and customer rebates and marketing allowances, among others. These reductions in revenue are considered variable consideration and are recorded in the same period the related sales are recorded. Such estimates are calculated using historical averages adjusted for any expected changes due to current business conditions and experience. See Note 3 — "Revenue Recognition" below for additional information on revenue recognition.

Retirement Plan

In order to measure the annual expense and calculate the liability associated with our SERP, management must make a variety of estimates including, but not limited to, discount rates, compensation increases and anticipated mortality rates. The estimates used by management are based on our historical experience as well as current facts and circumstances. We use a third-party specialist to assist management in appropriately measuring the expense associated with this employment-related benefit. Different estimates used by management could result in us recognizing different amounts of expense over different periods of time.

We recognize net actuarial gains or losses in excess of 10% of the plan's projected benefit obligation into current period expense over the average remaining expected service period of active participants.

The most significant assumption for pension plan accounting is the discount rate. We select a discount rate each year (as of our fiscal year end measurement date) for our plan based upon a hypothetical corporate bond portfolio for which the cash flows match the year-by-year projected benefit cash flows for our pension plan. The hypothetical bond portfolio is comprised of high-quality fixed income debt securities (usually Moody's Aa3 or higher) available at the measurement date. Based on this information, the discount rate selected by us for determination of pension expense was 4.68% for fiscal 2023, 2.89% for fiscal 2022, and 2.69% for fiscal 2021. A 25-basis point increase or decrease in our discount rate assumption for fiscal 2023 would have resulted in an immaterial change in our pension expense for fiscal 2023. For our year end pension obligation determination, we selected discount rates of 5.12% and 4.68% for fiscal years 2023 and 2022, respectively.

Recent Accounting Pronouncements

Refer to Note 1 — “Significant Accounting Policies” of the Notes to Consolidated Financial Statements for a discussion of recently issued accounting pronouncements.

Forward-Looking Statements

The statements contained in this Annual Report on Form 10-K, and in the Chief Executive Officer’s letter to stockholders accompanying the Annual Report on Form 10-K delivered to stockholders, that are not historical (including statements concerning our expectations regarding market risk) are “forward-looking statements.” These forward-looking statements may be followed (and therefore identified) by a cross reference to Part I, Item 1A — “Risk Factors” or may be otherwise identified by the use of forward-looking words and phrases such as “will”, “anticipates”, “intends”, “may”, “believes”, “should” and “expects”, and they are based on our current expectations or beliefs concerning future events and involve risks and uncertainties. We undertake no obligation to update publicly or otherwise revise any forward-looking statements, whether as a result of new information, future events or other factors that affect the subject of these statements, except where expressly required to do so by law. We caution that such statements are qualified by important factors, including the factors described in Part I, Item 1A — “Risk Factors” and other factors, risks and uncertainties that are beyond our control, that could cause results to differ materially from our current expectations and/or those in the forward-looking statements, as well as the timing and occurrence (or nonoccurrence) of transactions and other factors, risk, uncertainties and events which may be subject to circumstances beyond our control. Consequently, results actually achieved may differ materially from the expected results included in these statements.

Item 7A — Quantitative and Qualitative Disclosures About Market Risk

We are exposed to the impact of changes in interest rates, commodity prices of raw material purchases and foreign exchange. We have not entered into any arrangements to hedge against changes in market interest rates, commodity prices or foreign currency fluctuations.

We are unable to engage in hedging activity related to commodity prices, because there are no established futures markets for nuts; therefore, we can only attempt to pass on the commodity cost increases in the form of price increases to our customers. A hypothetical 1% increase in material costs, without a corresponding price increase, would have decreased gross profit approximately \$6.0 million for fiscal 2023. See Part I, Item 1A — “Risk Factors” for a further discussion of the risks and uncertainties related to commodity prices of raw materials and the impact thereof on our business.

Approximately 31% of the dollar value of our total nut purchases for fiscal 2023 were made from foreign countries, and while these purchases were payable in U.S. dollars, the underlying costs may fluctuate with changes in the value of the U.S. dollar relative to the currency in the foreign country from where the nuts are purchased, or to other major foreign currencies such as the euro.

We are exposed to interest rate risk on our Credit Facility, our only variable rate credit facility, because we have not entered into any hedging instruments which fix the floating rate or offset an increase in the floating rate. A hypothetical 10% adverse change in weighted-average interest rates would have had approximately a \$0.1 million impact on our net income and cash flows from operating activities for fiscal 2023.

Item 8 — Financial Statements and Supplementary Data

Report of Independent Registered Public Accounting Firm (PCAOB ID 238)

To the Board of Directors and Stockholders of John B. Sanfilippo & Son, Inc.

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of John B. Sanfilippo & Son, Inc. and its subsidiaries (the “Company”) as of June 29, 2023 and June 30, 2022, and the related consolidated statements of comprehensive income, of stockholders’ equity and of cash flows, for each of the three years in the period ended June 29, 2023, including the related notes (collectively referred to as the “consolidated financial statements”). We also have audited the Company’s internal control over financial reporting as of June 29, 2023, based on criteria established in *Internal Control—Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of June 29, 2023 and June 30, 2022, and the results of its operations and its cash flows for each of the three years in the period ended June 29, 2023 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of June 29, 2023, based on criteria established in *Internal Control—Integrated Framework* (2013) issued by the COSO.

Basis for Opinions

The Company’s management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control over Financial Reporting. Our responsibility is to express opinions on the Company’s consolidated financial statements and on the Company’s internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control over Financial Reporting

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (i) relates to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Valuation of the Projected Benefit Obligation related to the Supplemental Employee Retirement Plan (SERP)

As described in Note 15 to the consolidated financial statements, the Company's projected benefit obligation related to the SERP is \$28.0 million as of June 29, 2023. The SERP is an unfunded, non-qualified benefit plan that will provide eligible participants with monthly benefits upon retirement, disability or death, subject to certain conditions. Benefits paid to retirees are based on age at retirement, years of credited service, and average compensation. The most significant assumption related to the Company's SERP is the discount rate used to calculate the actuarial present value of benefit obligations to be paid in the future.

The principal considerations for our determination that performing procedures relating to the valuation of the projected benefit obligation related to the SERP is a critical audit matter are (i) the significant judgment by management to determine the projected benefit obligation and the significant assumption related to discount rate, (ii) the significant auditor judgment, subjectivity and effort in evaluating management's significant assumption related to the discount rate, and (iii) the audit effort included the use of professionals with specialized skill and knowledge.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to the Company's determination of the projected benefit obligation related to the SERP, including the control over the development of the significant assumption related to the discount rate. These procedures also included, among others (i) testing management's process for determining the projected benefit obligation, (ii) evaluating the appropriateness of the valuation method, (iii) testing the completeness and accuracy of underlying data used in the valuation of the projected benefit obligation, and (iv) evaluating the reasonableness of the discount rate. Evaluating management's assumption related to the discount rate involved evaluating whether the assumption used by management is reasonable considering the consistency with external market data. Professionals with specialized skill and knowledge were used to assist in evaluating the appropriateness of the valuation method and the reasonableness of the discount rate.

/s/ PricewaterhouseCoopers LLP

Chicago, Illinois
August 23, 2023

We have served as the Company's auditor since 1982.

JOHN B. SANFILIPPO & SON, INC.
CONSOLIDATED BALANCE SHEETS
June 29, 2023 and June 30, 2022
(dollars in thousands, except share and per share amounts)

	June 29, 2023	June 30, 2022
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 1,948	\$ 415
Accounts receivable, less allowance for doubtful accounts of \$283 and \$267, respectively	72,734	69,611
Inventories	172,936	204,855
Prepaid expenses and other current assets	6,812	8,283
TOTAL CURRENT ASSETS	254,430	283,164
PROPERTY, PLANT AND EQUIPMENT:		
Land	9,150	9,150
Buildings	104,150	102,810
Machinery and equipment	261,706	245,111
Furniture and leasehold improvements	5,275	5,296
Vehicles	729	614
Construction in progress	7,123	6,471
	388,133	369,452
Less: Accumulated depreciation	267,336	252,371
	120,797	117,081
Rental investment property, less accumulated depreciation of \$14,439 and \$13,632, respectively	14,684	15,491
TOTAL PROPERTY, PLANT AND EQUIPMENT	135,481	132,572
OTHER LONG TERM ASSETS:		
Intangible assets, net	6,658	8,065
Deferred income taxes	3,592	3,236
Goodwill	11,750	9,650
Operating lease right-of-use assets	6,427	2,303
Other assets	6,949	8,272
TOTAL ASSETS	\$ 425,287	\$ 447,262

The accompanying notes are an integral part of these consolidated financial statements.

JOHN B. SANFILIPPO & SON, INC.
CONSOLIDATED BALANCE SHEETS
June 29, 2023 and June 30, 2022
(dollars in thousands, except share and per share amounts)

	June 29, 2023	June 30, 2022
LIABILITIES & STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Revolving credit facility borrowings	\$ —	\$ 40,439
Current maturities of long-term debt, net, including related party debt of \$672 and \$614, respectively	672	3,149
Accounts payable	42,680	47,720
Bank overdraft	285	214
Accrued payroll and related benefits	27,572	18,888
Other accrued expenses	14,479	12,352
TOTAL CURRENT LIABILITIES	85,688	122,762
LONG-TERM LIABILITIES:		
Long-term debt, less current maturities, net, including related party debt of \$7,102 and \$7,774, respectively	7,102	7,774
Retirement plan	26,653	28,886
Long-term operating lease liabilities, net of current portion	4,771	1,076
Long-term workers' compensation liabilities	7,321	7,562
Other	1,545	381
TOTAL LONG-TERM LIABILITIES	47,392	45,679
TOTAL LIABILITIES	133,080	168,441
COMMITMENTS AND CONTINGENCIES		
STOCKHOLDERS' EQUITY:		
Class A Common Stock, convertible to Common Stock on a per share basis, cumulative voting rights of ten votes per share, \$.01 par value; 10,000,000 shares authorized, 2,597,426 shares issued and outstanding	26	26
Common Stock, non-cumulative voting rights of one vote per share, \$.01 par value; 17,000,000 shares authorized, 9,076,326 and 9,047,359 shares issued, respectively	91	90
Capital in excess of par value	131,986	128,800
Retained earnings	161,512	153,589
Accumulated other comprehensive loss	(204)	(2,480)
Treasury stock, at cost; 117,900 shares of Common Stock	(1,204)	(1,204)
TOTAL STOCKHOLDERS' EQUITY	292,207	278,821
TOTAL LIABILITIES & STOCKHOLDERS' EQUITY	\$ 425,287	\$ 447,262

The accompanying notes are an integral part of these consolidated financial statements.

JOHN B. SANFILIPPO & SON, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
For the years ended June 29, 2023, June 30, 2022 and June 24, 2021
(dollars in thousands, except share and per share amounts)

	Year Ended June 29, 2023 (52 Weeks)	Year Ended June 30, 2022 (53 Weeks)	Year Ended June 24, 2021 (52 Weeks)
Net sales	\$ 999,686	\$ 955,868	\$ 858,482
Cost of sales	788,055	756,241	673,495
Gross profit	<u>211,631</u>	<u>199,627</u>	<u>184,987</u>
Operating expenses:			
Selling expenses	76,803	76,882	63,020
Administrative expenses	44,604	37,657	36,789
Gain on sale of facility, net	—	(2,349)	—
Total operating expenses	<u>121,407</u>	<u>112,190</u>	<u>99,809</u>
Income from operations	<u>90,224</u>	<u>87,437</u>	<u>85,178</u>
Other expense:			
Interest expense including \$750, \$788 and \$653 to related parties, respectively	2,159	1,921	1,441
Rental and miscellaneous expense, net	1,321	1,347	1,399
Pension expense (excluding service costs)	1,394	2,473	2,519
Total other expense, net	<u>4,874</u>	<u>5,741</u>	<u>5,359</u>
Income before income taxes	<u>85,350</u>	<u>81,696</u>	<u>79,819</u>
Income tax expense	<u>22,493</u>	<u>19,909</u>	<u>20,078</u>
Net income	<u>62,857</u>	<u>61,787</u>	<u>59,741</u>
Other comprehensive income (loss), net of tax:			
Amortization of prior service cost and actuarial loss included in net periodic pension cost	21	1,077	1,229
Net actuarial gain (loss) arising during the period	2,255	5,468	(1,624)
Other comprehensive income (loss), net of tax	<u>2,276</u>	<u>6,545</u>	<u>(395)</u>
Comprehensive income	<u>\$ 65,133</u>	<u>\$ 68,332</u>	<u>\$ 59,346</u>
Net income per common share — basic	<u>\$ 5.43</u>	<u>\$ 5.36</u>	<u>\$ 5.19</u>
Net income per common share — diluted	<u>\$ 5.40</u>	<u>\$ 5.33</u>	<u>\$ 5.17</u>
Cash dividends declared per share	<u>\$ 4.75</u>	<u>\$ 3.00</u>	<u>\$ 5.00</u>
Weighted average shares outstanding — basic	<u>11,576,852</u>	<u>11,537,699</u>	<u>11,500,494</u>
Weighted average shares outstanding — diluted	<u>11,642,046</u>	<u>11,593,949</u>	<u>11,559,280</u>

The accompanying notes are an integral part of these consolidated financial statements

JOHN B. SANFILIPPO & SON, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
For the years ended June 29, 2023, June 30, 2022 and June 24, 2021
(dollars in thousands, except per share amounts)

	Class A		Common Stock		Capital in Excess of Par Value	Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock	Total
	Common Stock		Common Stock						
	Shares	Amount	Shares	Amount					
Balance, June 25, 2020	2,597,426	\$ 26	8,939,890	\$ 89	\$ 123,899	\$ 124,058	\$ (8,630)	\$ (1,204)	\$ 238,238
Net income						59,741			59,741
Cash dividends (\$5.00 per common share)						(57,463)			(57,463)
Pension liability amortization, net of income tax expense of \$432							1,229		1,229
Pension liability adjustment, net of income tax benefit of \$571							(1,624)		(1,624)
Equity award exercises, net of shares withheld for employee taxes			48,922	1	(536)				(535)
Stock-based compensation expense					2,908				2,908
Balance, June 24, 2021	2,597,426	\$ 26	8,988,812	\$ 90	\$ 126,271	\$ 126,336	\$ (9,025)	\$ (1,204)	\$ 242,494
Net income						61,787			61,787
Cash dividends (\$3.00 per common share)						(34,534)			(34,534)
Pension liability amortization, net of income tax expense of \$378							1,077		1,077
Pension liability adjustment, net of income tax benefit of \$1,922							5,468		5,468
Equity award exercises, net of shares withheld for employee taxes			58,547	—	(1,036)				(1,036)
Stock-based compensation expense					3,565				3,565
Balance, June 30, 2022	2,597,426	\$ 26	9,047,359	\$ 90	\$ 128,800	\$ 153,589	\$ (2,480)	\$ (1,204)	\$ 278,821
Net income						62,857			62,857
Cash dividends (\$4.75 per common share)						(54,934)			(54,934)
Pension liability amortization, net of income tax expense of \$7							21		21
Pension liability adjustment, net of income tax expense of \$752							2,255		2,255
Equity award exercises, net of shares withheld for employee taxes			28,967	1	(379)				(378)
Stock-based compensation expense					3,565				3,565
Balance, June 29, 2023	2,597,426	\$ 26	9,076,326	\$ 91	\$ 131,986	\$ 161,512	\$ (204)	\$ (1,204)	\$ 292,207

The accompanying notes are an integral part of these consolidated financial statements.

JOHN B. SANFILIPPO & SON, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the years ended June 29, 2023, June 30, 2022 and June 24, 2021
(dollars in thousands)

	Year Ended June 29, 2023 (52 Weeks)	Year Ended June 30, 2022 (53 Weeks)	Year Ended June 24, 2021 (52 Weeks)
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 62,857	\$ 61,787	\$ 59,741
Depreciation and amortization	20,513	18,286	18,308
Loss (gain) on disposition of properties, net	281	(1,753)	(2,717)
Deferred income tax expense	(1,115)	551	840
Stock-based compensation expense	3,565	3,565	2,908
Loss on previously held equity interest	1,000	—	—
Change in assets and liabilities, net of Acquisition:			
Accounts receivable, net	(3,123)	(3,277)	(9,391)
Inventories	32,159	(56,857)	24,070
Prepaid expenses and other current assets	1,471	285	(253)
Accounts payable	(5,036)	(94)	11,442
Accrued expenses	10,915	(4,641)	(1,487)
Income taxes receivable/payable	(104)	(1,841)	(2,302)
Other long-term liabilities	4,618	(964)	(765)
Other long-term assets	(4,653)	1,745	1,481
Other, net	1,307	2,812	2,822
Net cash provided by operating activities	<u>124,655</u>	<u>19,604</u>	<u>104,697</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchases of property, plant and equipment	(20,732)	(17,754)	(25,176)
Acquisition of <i>Just the Cheese</i> brand	(3,500)	—	—
Proceeds from insurance recoveries	—	—	2,506
Proceeds from dispositions of assets, net	1	3,950	299
Proceeds from the sale of life insurance policies	—	3,225	—
Other, net	(56)	(797)	(579)
Net cash used in investing activities	<u>(24,287)</u>	<u>(11,376)</u>	<u>(22,950)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Net short-term (repayments) borrowings	(40,439)	31,786	(18,355)
Principal payments on long-term debt	(3,154)	(3,822)	(5,309)
Increase (decrease) in bank overdraft	71	(879)	(948)
Dividends paid	(54,934)	(34,534)	(57,463)
Taxes paid related to net share settlement of equity awards	(379)	(1,036)	(535)
Net cash used in financing activities	<u>(98,835)</u>	<u>(8,485)</u>	<u>(82,610)</u>
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	1,533	(257)	(863)
Cash and cash equivalents, beginning of period	415	672	1,535
Cash and cash equivalents, end of period	<u>\$ 1,948</u>	<u>\$ 415</u>	<u>\$ 672</u>
Supplemental disclosures of cash flow information:			
Interest paid	\$ 2,116	\$ 1,742	\$ 1,319
Income taxes paid, excluding refunds of \$120, \$139, and \$545, respectively	23,427	21,278	21,967

The accompanying notes are an integral part of these consolidated financial statements.

JOHN B. SANFILIPPO & SON, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(dollars in thousands, except per share data)

NOTE 1 — SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Consolidation and Description of Business

Our consolidated financial statements include the accounts of John B. Sanfilippo & Son, Inc., and our wholly-owned subsidiary, JBSS Ventures, LLC. Our fiscal year ends on the last Thursday of June each year, and typically consists of fifty-two weeks (four thirteen-week quarters). However, the fiscal year ended June 30, 2022 consisted of fifty-three weeks with our fourth quarter containing fourteen weeks. The accompanying consolidated financial statements and related footnotes are presented in accordance with accounting principles generally accepted in the United States of America (“GAAP”).

We are one of the leading processors and distributors of peanuts, pecans, cashews, walnuts, almonds, and other nuts in the United States. These nuts are sold under our *Fisher*, *Orchard Valley Harvest*, *Squirrel Brand* and *Southern Style Nuts* brand names and under a variety of private brands. We also market and distribute, and in most cases, manufacture or process, a diverse product line of food and snack products, including peanut butter, almond butter, cashew butter, candy and confections, snack and trail mixes, snack bites, nutrition bars, sunflower kernels, dried fruit, corn snacks, chickpea snacks, sesame sticks and other sesame snack products under our brand names and under private brands. In addition, with our acquisition of the *Just the Cheese* brand, we have expanded our product offerings to include baked cheese snack products on a branded and private label basis. Our products are sold through three primary distribution channels, including food retailers in the consumer channel, commercial ingredient users and contract packaging customers.

Management Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates include reserves for customer deductions, the quantity of bulk inventories, the evaluation of recoverability of long-lived assets and the assumption used in estimating the annual discount rate utilized in determining the retirement plan liability. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents include cash on-hand and may periodically include money market instruments that are highly liquid investments. Cash and cash equivalents are carried at cost, which approximates fair value.

Accounts Receivable

Accounts receivable are stated at the amounts charged to customers, less allowances for doubtful accounts and reserves for estimated cash discounts and customer deductions. The allowance for doubtful accounts is calculated by specifically identifying customers that are credit risks and estimating the extent that other non-specifically identified customers will become credit risks. Account balances are charged off against the allowance when we conclude that it is probable the receivable will not be recovered. The reserve for estimated cash discounts is based on historical experience. The reserve for customer deductions represents known customer short payments and an estimate of future credit memos that will be issued to customers related to rebates and allowances for marketing and promotions based on agreed upon programs and historical experience.

Inventories

Inventories, which consist principally of inshell bulk-stored nuts, shelled nuts, dried fruit and processed and packaged nut products, are stated at the lower of cost (first-in, first-out) and net realizable value. Net realizable value is defined as estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. Inventory costs are reviewed at least quarterly. Fluctuations in the market price of pecans, peanuts, walnuts, almonds, cashews and other nuts may affect the value of inventory, gross profit and gross profit margin. When net realizable values move below costs, we record adjustments to write down the carrying values of inventories to the lower of cost (first-in, first-out) and net realizable value. The results of our shelling process can also result in changes to inventory costs, such as adjustments made pursuant to actual versus expected crop yields. We maintain significant inventories of bulk-stored inshell pecans, peanuts and walnuts. Quantities of inshell bulk-stored nuts are determined based on our inventory systems and are subject to quarterly physical verification techniques including observation, weighing and other methods. The quantities of each crop year bulk-stored nut inventories are generally shelled out over a ten to fifteen-month period, at which time revisions to any estimates, which historically averaged less than 1.0% of inventory purchases, are also recorded.

We enter into walnut purchase agreements with growers typically in our first fiscal quarter, under which they deliver their walnut crop to us during the fall harvest season (which typically occurs in our first and second fiscal quarters). Pursuant to our walnut purchase agreements, we determine the final price for this inventory after receipt and typically by the end of our third fiscal quarter. Since the ultimate purchase price to be paid is determined subsequent to receiving the walnut crop, we typically estimate the final purchase price for our first and second quarter interim financial statements based on crop size, quality, current market prices and other factors. Any such changes in estimates, which could be significant, are accounted for in the period of change by adjusting inventory on hand or cost of goods sold if the inventory has been sold. Changes in estimates may affect the ending inventory balances, as well as gross profit. There were no significant adjustments recorded in any of the periods presented.

Property, Plant and Equipment

Property, plant and equipment are stated at cost. Major improvements that extend the useful life, add capacity or add functionality are capitalized and charged to expense through depreciation. Repairs and maintenance costs are charged to expense as incurred. The cost and accumulated depreciation of assets sold or retired are removed from the respective accounts, and any gain or loss is recognized currently in operating income.

Depreciation expense for the last three fiscal years is as follows:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Depreciation expense	\$ 18,746	\$ 16,390	\$ 16,144

Cost is depreciated using the straight-line method over the following estimated useful lives:

<u>Classification</u>	<u>Estimated Useful Lives</u>
Buildings	10 to 40 years
Machinery and equipment	5 to 10 years
Furniture and leasehold improvements	5 to 10 years
Vehicles	3 to 5 years
Computers and software	3 to 10 years

No interest costs were capitalized for the last three fiscal years due to the lack of any significant project requiring such capitalization.

Business Combinations

We use the acquisition method in accounting for acquired businesses. Under the acquisition method, our financial statements reflect the operations of an acquired business starting from the completion of the acquisition. The assets acquired and liabilities assumed are recorded at their respective estimated fair values at the date of the acquisition. Any excess of the purchase price over the estimated fair values of the identifiable net assets acquired is recorded as goodwill.

Segment Reporting

We operate in a single reporting unit and operating segment that consists of selling various nut and nut related products through three distribution channels.

Impairment of Long-Lived Assets

We review held and used long-lived assets, including our rental investment property and amortizable identifiable intangible assets (e.g., customer relationships and brand names), to assess recoverability from projected undiscounted cash flows whenever events or changes in facts and circumstances indicate that the carrying value of the assets may not be recoverable. When such events occur, we compare the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset or asset group to the carrying amount of the long-lived asset or asset group. The cash flows are based on our best estimate of future cash flows derived from the most recent business projections. If this comparison indicates there is an impairment, the carrying value of the asset is reduced to its estimated fair value.

We did not record any impairment of long-lived assets for the last three fiscal years.

Goodwill

Goodwill currently represents the excess of the purchase price over the fair value of the net assets from our acquisition of Squirrel Brand, L.P. which closed in November 2017 and our acquisition of the *Just the Cheese* brand which closed in December 2022.

Goodwill is not amortized, but is tested annually as of the last day of each fiscal year for impairment, or whenever events or changes in circumstances indicate it is more likely than not that the carrying amount of the reporting unit is greater than its fair value. A significant amount of judgment is involved in determining if an indicator of impairment has occurred. Such indicators may include deterioration in general economic conditions, adverse changes in the markets in which we operate, increases in input costs that have negative effects on earnings and cash flows, or a trend of negative or declining cash flows over multiple periods, among others. The fair value that could be realized in an actual transaction may differ from that used to evaluate the impairment of goodwill.

In testing goodwill for impairment, we have the option to first assess qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not (more than 50%) that the estimated fair value of our single reporting unit is less than its carrying amount. If we elect to perform a qualitative assessment and determine that an impairment is more likely than not, we are then required to perform a quantitative impairment test, otherwise no further analysis is required. We also may elect not to perform the qualitative assessment and, instead, proceed directly to the quantitative impairment test.

Under the goodwill qualitative assessment, various events and circumstances that would affect the estimated fair value of our single reporting unit are identified (similar to impairment indicators above). During fiscal 2023, we elected to perform a qualitative impairment test which showed no indicators of goodwill impairment.

Under the goodwill quantitative impairment test, the evaluation of impairment involves comparing the current fair value of our single reporting unit to its carrying value, including goodwill. We estimate the fair value using level 3 inputs as defined by the fair value hierarchy. The inputs used to estimate fair value include several subjective factors, such as estimates of future cash flows, estimates of our future cost structure, discount rates for our estimated cash flows, required level of working capital, assumed terminal value and time horizon of cash flow forecasts. Our market capitalization is also an estimate of fair value that is considered in our qualitative impairment analysis which is a level 1 input in the fair value hierarchy. If the carrying value of our single reporting unit exceeds its fair value, we recognize an impairment loss equal to the difference between the carrying value and estimated fair value.

Elgin Rental Property

In April 2005, we acquired property to be used for the Elgin Site. Two buildings are located on the Elgin Site, one of which is an office building. Approximately 69% of the rentable area in the office building is currently vacant. Approximately 29% of the rentable area has not been built-out. The other building, a warehouse, was expanded and modified for use as our principal processing facility and headquarters. The allocation of the purchase price to the two buildings was determined through a third-party appraisal. The value assigned to the office building is included in rental investment property on the balance sheet. The value assigned to the warehouse building is included in the caption "Property, plant and equipment".

The net rental expense from the office building is included in the caption "Rental and miscellaneous expense, net".

See Note 4 — "Leases" below for additional information.

Fair Value of Financial Instruments

Authoritative guidance issued by the Financial Accounting Standards Board ("FASB") defines fair value as the price that would be received for an asset or paid to transfer a liability in an orderly transaction between market participants on the measurement date. The guidance establishes a fair value hierarchy that prioritizes observable and unobservable inputs used to measure fair value into three broad levels:

- Level 1- Quoted prices in active markets that are accessible at the measurement date for identical assets and liabilities.
- Level 2- Observable inputs other than quoted prices in active markets. For example, quoted prices for similar assets or liabilities in active markets or quoted prices for identical assets or liabilities in inactive markets.
- Level 3- Unobservable inputs for which there is little or no market data available.

The carrying values of cash, cash equivalents, trade accounts receivable and accounts payable approximate their fair values at June 29, 2023 and June 30, 2022 because of the short-term maturities and nature of these balances.

The carrying value of our Credit Facility (as defined in Note 7 — “Revolving Credit Facility” below) borrowings approximates fair value at June 29, 2023 because interest rates on this instrument approximate current market rates (Level 2 criteria), the short-term maturity and nature of this balance. In addition, there has been no significant change in our inherent credit risk.

The following table summarizes the carrying value and fair value estimate of our current and long-term debt, excluding unamortized debt issuance costs:

	June 29, 2023	June 30, 2022
Carrying value of current and long-term debt:	\$ 7,774	\$ 10,927
Fair value of current and long-term debt:	7,421	11,179

The estimated fair value of our current and long-term debt was determined using a market approach based upon Level 2 observable inputs, which estimates fair value based on interest rates currently offered on loans with similar terms to borrowers of similar credit quality or broker quotes. In addition, there have been no significant changes in the underlying assets securing our long-term debt.

Revenue Recognition

The Company records revenue based on a five-step model in accordance with ASC Topic 606, *Revenue from Contracts with Customers*. The core principle of the guidance is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for the goods or services. We sell our products under some arrangements which include customer contracts that fix the sales price for periods, which typically can be up to one year for some commercial ingredient customers. We also sell our products through specific programs consisting of promotion allowances, volume and customer rebates and marketing allowances, among others, to consumer and some commercial ingredient users. We recognize revenues as performance obligations are fulfilled, which occurs when control passes to our customers. We report all amounts billed to a customer in a sale transaction as revenue, including those amounts related to shipping and handling. We reduce revenue for estimated promotion allowances, volume and customer rebates and marketing allowances, among others. These reductions in revenue are considered variable consideration and are recorded in the same period the related sales are recorded. Such estimates are calculated using historical averages adjusted for any expected changes due to current business conditions and experience. See Note 3 — “Revenue Recognition” below for additional information on revenue recognition.

Significant Customers and Concentration of Credit Risk

The highly competitive nature of our business provides an environment for the loss of customers and the opportunity to gain new customers. We are subject to concentrations of credit risk, primarily in trade accounts receivable, and we attempt to mitigate this risk through our credit evaluation process, collection terms and through geographical dispersion of sales. Sales to two customers exceeded 10% of net sales during fiscal 2023, fiscal 2022 and fiscal 2021. In total, sales to these customers represented approximately 51%, 49% and 48% of our net sales in fiscal 2023, fiscal 2022 and fiscal 2021, respectively. In total, net accounts receivable from these customers were 45% and 43% of net accounts receivable at June 29, 2023 and June 30, 2022, respectively.

Marketing and Advertising Costs

Marketing and advertising costs, including consumer insight research and related consulting expenses, are incurred to promote and support branded products primarily in the consumer distribution channel. These costs are generally expensed as incurred, recorded in selling expenses and were as follows for the last three fiscal years:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Marketing and advertising expense	\$ 13,947	\$ 13,964	\$ 9,172

Shipping and Handling Costs

Shipping and handling costs, which include freight and other expenses to prepare finished goods for shipment, are included in selling expenses. Shipping and handling costs for the last three fiscal years were as follows:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Shipping and handling costs	\$ 30,918	\$ 33,851	\$ 26,456

Research and Development Expenses

Research and development expense represents the cost of our research and development personnel and their related expenses and is charged to selling expenses as incurred. Research and development expenses for the last three fiscal years were as follows:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Research and development expense	\$ 3,362	\$ 2,833	\$ 2,000

Stock-Based Compensation

We account for stock-based employee compensation arrangements in accordance with the provisions of ASC Topic 718, *Compensation — Stock Compensation*, by calculating compensation cost based on the grant date fair value. We then amortize compensation expense over the vesting period. The grant date fair value of restricted stock units (“RSUs”) is generally determined based on the market price of our Common Stock on the date of grant. Forfeitures are recognized as they occur, and excess tax benefits or tax deficiencies are recognized as a component of income tax expense.

Income Taxes

We account for income taxes using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been reported in our financial statements or tax returns. Such items give rise to differences in the financial reporting and tax basis of assets and liabilities. A valuation allowance is recorded to reduce the carrying amount of deferred tax assets if it is more likely than not that all or a portion of the asset will not be realized. In estimating future tax consequences, we consider all expected future events other than changes in tax law or rates.

We record liabilities for uncertain income tax positions based on a two-step process. The first step is recognition, where we evaluate whether an individual tax position has a likelihood of greater than 50% of being sustained upon examination based on the technical merits of the position, including resolution of any related appeals or litigation processes. For tax positions that are currently estimated to have a less than 50% likelihood of being sustained, no tax benefit is recorded. For tax positions that have met the recognition threshold in the first step, we perform the second step of measuring the benefit to be recorded. The actual benefits ultimately realized may differ from our estimates. In future periods, changes in facts, circumstances, and new information may require us to change the recognition and measurement estimates with regard to individual tax positions. Changes in recognition and measurement estimates are recorded in results of operations and financial position in the period in which such changes occur.

We recognize interest and penalties accrued related to unrecognized tax benefits in the “Income tax expense” caption in the Consolidated Statement of Comprehensive Income.

We evaluate the realization of deferred tax assets by considering our historical taxable income and future taxable income based upon the reversal of deferred tax liabilities. As of June 29, 2023, we believe that our deferred tax assets are fully realizable.

Earnings per Share

Basic earnings per common share are calculated using the weighted average number of shares of Common Stock and Class A Stock outstanding during the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue Common Stock were exercised or converted into Common Stock or resulted in the issuance of Common Stock.

The following table presents the reconciliation of the weighted average shares outstanding used in computing basic and diluted earnings per share:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Weighted average number of shares outstanding — basic	11,576,852	11,537,699	11,500,494
Effect of dilutive securities:			
Stock options and restricted stock units	65,194	56,250	58,786
Weighted average number of shares outstanding — diluted	11,642,046	11,593,949	11,559,280

There were no anti-dilutive awards excluded from the computation of diluted earnings per share for any periods presented.

Comprehensive Income

We account for comprehensive income in accordance with ASC Topic 220, *Comprehensive Income*. This topic establishes standards for reporting and displaying comprehensive income and its components in a full set of general-purpose financial statements. The topic requires that all components of comprehensive income be reported in a financial statement that is displayed with the same prominence as other financial statements. This topic also requires all non-owner changes in stockholders' equity be presented in either a single continuous statement of comprehensive income or in two separate but consecutive statements. This guidance also requires presentation by the respective line items of net income, either on the face of the statement where net income is presented or in the notes and information about significant amounts required under U.S. GAAP to be reclassified out of accumulated other comprehensive income in their entirety. For amounts not required to be reclassified in their entirety to net income, we provide a cross-reference to other disclosures that offer additional details about those amounts.

Recent Accounting Pronouncements

There were no recent accounting pronouncements adopted in the current fiscal year. There are no recent accounting pronouncements that have not yet been adopted.

NOTE 2 — ACQUISITION OF JUST THE CHEESE BRAND

On December 16, 2022, we completed the acquisition of certain assets of Specialty Cheese Company, Inc. The acquired assets are primarily related to the manufacturing and sale of baked cheese snack products, including those products sold under the *Just the Cheese* brand, all finished goods inventory and intangible assets. At the time of the closing of the Acquisition, the full purchase price of \$3,500 was paid in cash and funded from our Credit Facility (as defined below). *Just the Cheese* is one of the nation's leading baked cheese snacking brands and offers 100% real cheese snack bars and cheese crisps. The Acquisition provides us with a product that expands our portfolio into new snacking categories and is anticipated to accelerate growth with our private brand and food service customers. The Acquisition has been accounted for as a business combination in accordance with ASC Topic 805, "Business Combinations".

The final purchase price allocation was completed during the third quarter of fiscal 2023 which resulted in immaterial changes to fixed assets and customer relationships. The total purchase price of \$3,500 has been allocated to the fair values of the assets acquired as follows:

Inventories	\$	240
Fixed assets		800
Identifiable intangible assets:		
Customer relationships		250
Brand names		80
Non-compete agreement		30
Goodwill		2,100
Total purchase price	\$	<u>3,500</u>

The customer relationship assets represent the value of the long-term strategic relationship with significant customers who purchase *Just the Cheese* brand products which we are amortizing over a life of 2.3 years. The brand name asset represents the value of the established *Just the Cheese* brand name.

Goodwill, which is expected to be deductible for tax purposes, arises from intangible assets that do not qualify for separate recognition and expected synergies from combining the operations related to the *Just the Cheese* brand with those of the Company. There were no material contingencies recognized or unrecognized associated with the Acquisition.

Due to the immaterial financial nature of the Acquisition, unaudited pro forma results of operations of the Company (as if the Acquisition had taken place at the beginning of fiscal 2022) will not be presented.

Since the Acquisition, we continue to operate in a single reportable operating segment that consists of selling various nut and nut-related products through three sales distribution channels.

NOTE 3 — REVENUE RECOGNITION

We recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those goods or services. For each customer contract, a five-step process is followed in which we identify the contract, identify performance obligations, determine the transaction price, allocate the contract transaction price to the performance obligations, and recognize the revenue when (or as) the performance obligation is transferred to the customer.

Nature of Products

We manufacture and sell the following:

- branded products under our own proprietary brands to retailers on a national basis;
- private label products to retailers, such as supermarkets, mass merchandisers, and specialty retailers, for resale under the retailers' own or controlled labels;
- private label and branded products to the foodservice industry, including foodservice distributors and national restaurant operators;
- branded products under co-pack agreements to other major branded companies for their distribution; and
- products to our industrial customer base for repackaging in portion control packages and for use as ingredients by other food manufacturers.

When Performance Obligations Are Satisfied

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account for revenue recognition. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. The Company's performance obligations are primarily for the delivery of raw and processed recipe and snack nuts, nut butters and trail mixes.

Our customer contracts do not include more than one performance obligation. If a contract were to contain more than one performance obligation, we are required to allocate the contract's transaction price to each performance obligation based on its relative standalone selling price. The standalone selling price for each distinct good is generally determined by directly observable data.

Revenue recognition is generally completed at a point in time when product control is transferred to the customer. For virtually all of our revenues, control transfers to the customer when the product is shipped or delivered to the customer based upon applicable shipping terms, as the customer can then direct the use and obtain substantially all of the remaining benefits from the asset at that point in time. Therefore, the timing of our revenue recognition requires little judgment.

The performance obligations in our contracts are satisfied within one year, and typically much less. As such, we have not disclosed the transaction price allocated to remaining performance obligations for any periods presented.

Significant Payment Terms

Our customer contracts identify the product, quantity, price, payment and final delivery terms. Payment terms usually include early pay discounts. We grant payment terms consistent with industry standards. On a limited basis some payment terms may be extended; however, no payment terms beyond six months are granted at contract inception. The average customer payment is received within approximately 32 days of the invoice date. As a result, we do not adjust the promised amount of consideration for the effects of a significant financing component because the period between our transfer of a promised good or service to a customer and the customer's payment for that good or service will be six months or less.

Shipping

All shipping and handling costs associated with outbound freight are accounted for as fulfillment costs and are included in selling expense.

Variable Consideration

Some of our products are sold through specific incentive programs consisting of promotional allowances, volume and customer rebates, in-store display incentives and marketing allowances, among others, to consumer and some commercial ingredient customers. The ultimate cost of these programs is dependent on certain factors such as actual purchase volumes or customer activities and is dependent on significant management judgment when determining estimates. The Company accounts for these programs as variable consideration and recognizes a reduction in revenue (and a corresponding reduction in the transaction price) in the same period as the underlying program based upon the terms of the specific arrangements.

Trade promotions, consisting primarily of customer pricing allowances, merchandising funds and consumer coupons, are also offered through various programs to customers and consumers. A provision for estimated trade promotions is recorded as a reduction of revenue (and a reduction in the transaction price) in the same period when the sale is recognized. Revenues are also recorded net of expected customer deductions which are provided for based upon past experiences. Evaluating these estimates requires management judgment.

We generally use the most likely amount method to determine the variable consideration. We believe there will not be significant changes to our estimates of variable consideration when any related uncertainties are resolved with our customers. The Company reviews and updates its estimates and related accruals of variable consideration and trade promotions at least quarterly based on the terms of the agreements and historical experience. Any uncertainties in the ultimate resolution of variable consideration due to factors outside of the Company's influence are typically resolved within a short timeframe, therefore, no additional constraint on the variable consideration is required.

Product Returns

While customers generally have the right to return defective or non-conforming products, past experience has demonstrated that product returns have generally been immaterial. Customer remedies may include either a cash refund or an exchange of the returned product. As a result, the right of return and related refund liability for non-conforming or defective goods is estimated and recorded as a reduction in revenue, if necessary.

Contract Balances

Contract assets or liabilities result from transactions with revenue recorded over time. If the measure of remaining rights exceeds the measure of the remaining performance obligations, the Company records a contract asset. Conversely, if the measure of the remaining performance obligations exceeds the measure of the remaining rights, the Company records a contract liability. There was no contract asset balance for any periods presented. The Company generally does not have material deferred revenue or contract liability balances arising from transactions with customers.

Contract Costs

The Company does not incur significant fulfillment costs requiring capitalization.

Disaggregation of Revenue

Revenue disaggregated by distribution channel is as follows:

Distribution Channel	For the Year Ended		
	June 29, 2023	June 30, 2022	June 24, 2021
Consumer	\$ 785,646	\$ 749,895	\$ 686,049
Commercial Ingredients	123,094	120,577	92,911
Contract Packaging	90,946	85,396	79,522
Total	<u>\$ 999,686</u>	<u>\$ 955,868</u>	<u>\$ 858,482</u>

NOTE 4 — LEASES

We lease equipment used in the transportation of goods in our warehouses, as well as a limited number of automobiles and a small warehouse near our Bainbridge, Georgia facility. Our leases generally do not contain non-lease components and do not contain any explicit guarantees of residual value. Our leases for warehouse transportation equipment generally require the equipment to be returned to the lessor in good working order.

Through a review of our contracts, we determine if an arrangement is a lease at inception and analyze the lease to determine if it is operating or finance. Operating lease right-of-use assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. As most of our leases do not provide an implicit rate, we use our incremental collateralized borrowing rate based on the information available at the commencement date in determining the present value of lease payments. Implicit rates are used when readily determinable. None of our leases currently contain options to extend the term. In the event of an option to extend the term of a lease, the lease term used in measuring the liability would include options to extend or terminate the lease if it is reasonably certain that the Company will exercise that option. Lease expense for operating lease payments is recognized on a straight-line basis over the respective lease term. Our leases have remaining terms of up to 5.4 years.

It is our accounting policy not to apply lease recognition requirements to short-term leases, defined as leases with an initial term of 12 months or less. As such, leases with an initial term of 12 months or less are not recorded in the Consolidated Balance Sheet. We have also made the policy election to not separate lease and non-lease components for all leases.

The following table provides supplemental information related to operating lease right-of-use assets and liabilities:

	June 29, 2023	June 30, 2022	Affected Line Item in Consolidated Balance Sheet
Assets			
Operating lease right-of-use assets	\$ 6,427	\$ 2,303	<i>Operating lease right-of-use assets</i>
Total lease right-of-use assets	<u>\$ 6,427</u>	<u>\$ 2,303</u>	
Liabilities			
Current:			
Operating leases	\$ 1,729	\$ 1,258	<i>Other accrued expenses</i>
Noncurrent:			
Operating leases	4,771	1,076	<i>Long-term operating lease liabilities</i>
Total lease liabilities	<u>\$ 6,500</u>	<u>\$ 2,334</u>	

The following tables summarize the Company's total lease costs and other information arising from operating lease transactions:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Operating lease costs ^(a)	\$ 2,215	\$ 1,858	\$ 1,841
Variable lease costs ^(b)	208	141	71
Total Lease Cost	<u>\$ 2,423</u>	<u>\$ 1,999</u>	<u>\$ 1,912</u>

^(a) Includes short-term leases which are immaterial.

^(b) Variable lease costs consist of sales tax and lease overtime charges.

Supplemental cash flow and other information related to leases was as follows:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Operating cash flows information:			
Cash paid for amounts included in measurements for lease liabilities	\$ 1,804	\$ 1,565	\$ 1,562
Non-cash activity:			
Right-of-use assets obtained in exchange for new operating lease obligations	\$ 5,749	\$ 244	\$ 574

	June 29, 2023	June 30, 2022
Weighted Average Remaining Lease Term (in years)	4.4	2.3
Weighted Average Discount Rate	6.7%	4.3%

Maturities of operating lease liabilities as of June 29, 2023 are as follows:

<u>Fiscal Year Ending</u>	
June 27, 2024	\$ 2,103
June 26, 2025	1,631
June 25, 2026	1,426
June 24, 2027	1,190
June 29, 2028	1,026
Thereafter	140
Total lease payments	7,516
Less imputed interest	(1,016)
Present value of operating lease liabilities	<u>\$ 6,500</u>

At June 29, 2023, the Company has additional operating leases of approximately \$380 that have not yet commenced and therefore are not reflected in the Consolidated Balance Sheet and tables above. The leases are scheduled to commence in the first half of fiscal 2024 with an initial lease term ranging from 5 to 6 years.

Lessor Accounting

We lease office space in our four-story office building located in Elgin, Illinois. As a lessor, we retain substantially all of the risks and benefits of ownership of the investment property and under Topic 842: *Leases* we continue to account for all of our leases as operating leases. Lease agreements may include options to renew. We accrue fixed lease income on a straight-line basis over the terms of the leases. There is generally no variable lease consideration and an immaterial amount of non-lease components such as recurring utility and storage fees. Leases between related parties are immaterial.

Leasing revenue is as follows:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Lease income related to lease payments	\$ 1,651	\$ 1,665	\$ 1,827

The future minimum, undiscounted fixed cash flows under non-cancelable tenant operating leases for each of the next five years and thereafter is presented below.

<u>Fiscal Year Ending</u>	
June 27, 2024	\$ 2,023
June 26, 2025	1,473
June 25, 2026	972
June 24, 2027	930
June 29, 2028	328
Thereafter	1,814
	<u>\$ 7,540</u>

NOTE 5 — INVENTORIES

Inventories consist of the following:

	June 29, 2023	June 30, 2022
Raw material and supplies	\$ 65,430	\$ 77,558
Work-in-process and finished goods	107,506	127,297
	<u>\$ 172,936</u>	<u>\$ 204,855</u>

NOTE 6 – GOODWILL AND INTANGIBLE ASSETS

Intangible assets subject to amortization consist of the following:

	June 29, 2023	June 30, 2022
Customer relationships	\$ 21,350	\$ 21,100
Non-compete agreements	300	270
Brand names	17,070	16,990
Total intangible assets, gross	<u>38,720</u>	<u>38,360</u>
Less accumulated amortization:		
Customer relationships	(19,834)	(18,795)
Non-compete agreements	(273)	(248)
Brand names	(11,955)	(11,252)
Total accumulated amortization	<u>(32,062)</u>	<u>(30,295)</u>
Net intangible assets	<u>\$ 6,658</u>	<u>\$ 8,065</u>

Customer relationships relate to the *Just the Cheese* brand acquisition completed in fiscal 2023, the Squirrel Brand acquisition completed in fiscal 2018 and the Orchard Valley Harvest (“OVH”) acquisition completed in fiscal 2010. The customer relationships resulting from the OVH acquisition were fully amortized in fiscal 2017. The brand names consist primarily of the *Squirrel Brand* and *Southern Style Nuts* brand names acquired in fiscal 2018 and the *Fisher* brand name, which we acquired in a 1995 acquisition. The *Fisher* brand name was fully amortized in fiscal 2011. The remainder of the brand name relates to *Just the Cheese* brand acquisition completed in fiscal 2023 and the OVH acquisition, which was fully amortized in fiscal 2015.

Total amortization expense related to intangible assets, which is classified in administrative expense in the Consolidated Statement of Comprehensive Income, was as follows for the last three fiscal years:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Amortization of intangible assets	<u>\$ 1,767</u>	<u>\$ 1,896</u>	<u>\$ 2,164</u>

Expected amortization expense the next five fiscal years is as follows:

Fiscal Year Ending	
June 27, 2024	\$ 1,565
June 26, 2025	1,213
June 25, 2026	880
June 24, 2027	706
June 29, 2028	528

The intangibles related to the *Just the Cheese* brand acquisition, which are reflected in the above table, and the expected amortization expense is based on the final valuation report with respect to such intangible assets.

Our net goodwill at June 30, 2022 was comprised of \$9,650 from the Squirrel Brand acquisition completed in fiscal 2018. Our net goodwill at June 29, 2023 includes an additional \$2,100 from the *Just the Cheese* brand acquisition completed in fiscal 2023. The changes in the carrying amount of goodwill during the two fiscal years ended June 29, 2023 are as follows:

Gross goodwill balance at June 25, 2021	\$ 18,416
Accumulated impairment losses	(8,766)
Net balance at June 25, 2021	<u>9,650</u>
Goodwill acquired during the period	2,100
Net balance at June 29, 2023	<u>\$ 11,750</u>

NOTE 7 — REVOLVING CREDIT FACILITY

On March 5, 2020, we entered into an Amended and Restated Credit Agreement (the “Amended and Restated Credit Agreement”), which amended and restated our Credit Agreement dated as of February 7, 2008 (the “Former Credit Agreement”). The Amended and Restated Credit Agreement provides for a \$117,500 senior secured revolving credit facility (the “Credit Facility”) with the same borrowing capacity, interest rates and applicable margin as the Former Credit Agreement and extends the term of the Former Credit Agreement from July 7, 2021 to March 5, 2025. The Credit Facility is secured by substantially all our assets other than machinery and equipment, real property and fixtures.

On May 8, 2023, we entered into the First Amendment to our Credit Facility (the "First Amendment") which replaced the London interbank offered rate (LIBOR) interest rate option with the Secured Overnight Financing Rate ("SOFR"). The First Amendment updated the accrued interest rate to a rate based on SOFR plus an applicable margin based upon the borrowing base calculation, ranging from 1.35% to 1.85%.

At June 29, 2023 there were no borrowings on the line of credit under the Credit Facility and thus no applicable interest rate on the borrowings. At June 29, 2023 and June 30, 2022, our unused letters of credit were \$5,810 and \$4,814, respectively. At June 30, 2022, the weighted average interest rate for the Credit Facility was 3.41%. The terms of the Credit Facility contain covenants that require us to restrict investments, indebtedness, acquisitions and certain sales of assets, cash dividends, redemptions of capital stock and prepayment of indebtedness (if such prepayment, among other things, is of a subordinate debt). If loan availability under the Borrowing Base Calculation falls below \$25,000, we will be required to maintain a specified fixed charge coverage ratio, tested on a monthly basis. All cash received from customers is required to be applied against the Credit Facility. The Bank Lenders are entitled to require immediate repayment of our obligations under the Credit Facility in the event of default on the payments required under the Credit Facility, a change in control in the ownership of the Company, non-compliance with the financial covenant or upon the occurrence of certain other defaults by us under the Credit Facility (including a default under the Mortgage Facility). As of June 29, 2023, we were in compliance with the financial covenant under the Credit Facility and we currently expect to be in compliance with the financial covenant in the Credit Facility for the next twelve months. At June 29, 2023, we had \$113,310 of available credit under the Credit Facility, which reflects no borrowings and reduced availability as a result of \$4,190 in outstanding letters of credit. We would still be in compliance with all restrictive covenants under the Credit Facility if this entire amount were borrowed.

NOTE 8 — LONG-TERM DEBT

Long-term debt consists of the following:

	June 29, 2023	June 30, 2022
Mortgage Facility (“Tranche A”), collateralized by real property, due in monthly installments of \$230 including interest at 4.25% per annum with a final payment due March 1, 2023	\$ —	\$ 2,031
Mortgage Facility (“Tranche B”), collateralized by real property, due in monthly installments of \$57 including interest at 4.25% per annum with a final payment due March 1, 2023	—	508
Selma, Texas facility financing obligation to related parties, due in monthly installments of \$114 including interest at 9.25% through September 1, 2026	7,774	8,388
Unamortized debt issuance costs	—	(4)
	7,774	10,923
Less: Current maturities, net of unamortized debt issuance costs	(672)	(3,149)
Total long-term debt, net of unamortized debt issuance costs	\$ 7,102	\$ 7,774

On February 7, 2008, we entered into a Loan Agreement with an insurance company (the “Mortgage Lender”) providing us with two term loans, one in the amount of \$36,000 (“Tranche A”) and the other in the amount of \$9,000 (“Tranche B”), for an aggregate amount of \$45,000 (the “Mortgage Facility”). The Mortgage Facility was secured by mortgages on essentially all of our owned real property located in Elgin, Illinois and Gustine, California (the “Encumbered Properties”). The Mortgage Facility was repaid in full in the third quarter of fiscal 2023 and the related mortgages on our owned real property located in Elgin, Illinois and Gustine, California have been released.

In September 2006, we sold our Selma, Texas properties to two related party partnerships for \$14,300 and are leasing them back. The selling price was determined by an independent appraiser to be the fair market value which also approximated our carrying value. The lease for the Selma, Texas properties had an initial ten-year term at a fair market value rent with three five-year renewal options. In September 2015, we signed a lease renewal which exercised two five-year renewal options and extended the term of our Selma lease to September 18, 2026. The lease extension also reduced the base monthly lease amount to \$103, beginning in September 2016. At the end of each five-year renewal option, the base monthly lease amounts are reassessed, and the monthly payments increased to \$114 beginning in September 2021. One five-year renewal option remains. Also, we currently have the option to purchase the properties from the lessor at 95% (100% in certain circumstances) of the then fair market value, but not to be less than the \$14,300 purchase price. The financing obligation is being accounted for similar to the accounting for a capital lease, whereby the purchase price was recorded as a debt obligation, as the provisions of the arrangement are not eligible for sale-leaseback accounting. The balance of the debt obligation outstanding at June 29, 2023 was \$7,774.

Aggregate maturities of long-term debt are as follows:

<u>Fiscal Year Ending</u>	
June 27, 2024	\$ 672
June 26, 2025	737
June 25, 2026	809
June 24, 2027	887
June 29, 2028	972
Thereafter	3,697
	<u>\$ 7,774</u>

NOTE 9 — INCOME TAXES

The provision for income taxes is based entirely on income before income taxes earned in the United States, and is as follows for the last three fiscal years:

	<u>For the Year Ended</u>		
	<u>June 29, 2023</u>	<u>June 30, 2022</u>	<u>June 24, 2021</u>
Current:			
Federal	\$ 18,393	\$ 14,347	\$ 15,228
State	5,215	5,011	4,010
Total current expense	23,608	19,358	19,238
Deferred:			
Deferred federal	(1,164)	1,519	891
Deferred state	49	(968)	(51)
Total deferred (benefit) expense	(1,115)	551	840
Total income tax expense	<u>\$ 22,493</u>	<u>\$ 19,909</u>	<u>\$ 20,078</u>

The reconciliations of income taxes at the statutory federal income tax rate to income tax expense reported in the Consolidated Statements of Comprehensive Income for the last three fiscal years are as follows:

	<u>June 29, 2023</u>	<u>June 30, 2022</u>	<u>June 24, 2021</u>
Federal statutory income tax rate	21.0%	21.0%	21.0%
State income taxes, net of federal benefit	4.9	3.7	3.9
Section 162(m) limitation	0.7	0.6	1.1
Research and development tax credit	(0.3)	(0.4)	(0.5)
Share-based compensation shortfall expense (windfall benefit)	0.1	(0.7)	(0.4)
Uncertain tax positions	0.1	0.1	0.1
Other	(0.1)	0.1	—
Effective tax rate	<u>26.4%</u>	<u>24.4%</u>	<u>25.2%</u>

Deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial statement basis and the tax basis of assets and liabilities using enacted statutory tax rates applicable to future years. Deferred tax assets and liabilities are comprised of the following:

	June 29, 2023	June 30, 2022
Deferred tax assets (liabilities):		
Accounts receivable	\$ 346	\$ 368
Employee compensation	1,866	1,499
Inventory	371	295
Depreciation	(14,303)	(13,732)
Capitalized leases	1,140	1,196
Goodwill and intangible assets	1,474	2,046
Retirement plan	7,004	7,673
Workers' compensation	1,950	2,048
Share based compensation	1,642	1,472
Research related expenditures	1,549	—
Other	553	371
Net deferred tax asset	<u>\$ 3,592</u>	<u>\$ 3,236</u>

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income of the character necessary during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities (including the impact of available carryback and carryforward periods), projected future taxable income and tax-planning strategies in making this assessment. If or when recognized, the tax benefits relating to any reversal of the valuation allowance will be recognized as a reduction of income tax expense.

For the years ending June 29, 2023 and June 30, 2022, unrecognized tax benefits and accrued interest and penalties were \$448 and \$381. Accrued interest and penalties related to uncertain tax positions are not material for any periods presented. Interest and penalties within income tax expense were not material for any period presented. The total gross amounts of unrecognized tax benefits were \$463 and \$390 at June 29, 2023 and June 30, 2022, respectively.

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits is as follows:

	June 29, 2023	June 30, 2022	June 24, 2021
Beginning balance	\$ 390	\$ 326	\$ 203
Gross increases — tax positions in prior year	32	1	49
Gross decreases — tax positions in prior year	—	—	—
Settlements	(36)	—	—
Gross increases — tax positions in current year	127	110	110
Lapse of statute of limitations	(50)	(47)	(36)
Ending balance	<u>\$ 463</u>	<u>\$ 390</u>	<u>\$ 326</u>

Unrecognized tax benefits, that if recognized, would affect the annual effective tax rate on income from continuing operations, are as follows:

	June 29, 2023	June 30, 2022	June 24, 2021
Unrecognized tax benefits that would affect annual effective tax rate	\$ 439	\$ 373	\$ 311

During fiscal 2023, the change in unrecognized tax benefits due to statute expiration was not material. We do not anticipate that total unrecognized tax benefits will significantly change in the next twelve months.

We file income tax returns with federal and state tax authorities within the United States of America. Our federal tax returns are open for audit for fiscal 2020 through 2022. Our Illinois tax returns are under audit for fiscal 2021. Our Illinois tax return for fiscal 2022 is open for audit. Our California tax returns for fiscal 2019 through 2022 are open for audit. No other tax jurisdictions are material to us.

NOTE 10 — COMMITMENTS AND CONTINGENCIES

Litigation

We are currently a party to various legal proceedings in the ordinary course of business. While management presently believes that the ultimate outcomes of these proceedings, individually and in the aggregate, will not materially affect our financial position, results of operations or cash flows, legal proceedings are subject to inherent uncertainties, and unfavorable outcomes could occur. Unfavorable outcomes could include substantial money damages in excess of any appropriate accruals, which management has established. Were such unfavorable final outcomes to occur, there exists the possibility of a material adverse effect on our financial position, results of operations and cash flows.

NOTE 11 — STOCKHOLDERS' EQUITY

Our Class A Common Stock, \$.01 par value (the "Class A Stock"), has cumulative voting rights with respect to the election of those directors which the holders of Class A Stock are entitled to elect, and 10 votes per share on all other matters on which holders of our Class A Stock and Common Stock are entitled to vote, with the exception of election of the directors for which the holders of Common Stock are eligible to elect. In addition, each share of Class A Stock is convertible at the option of the holder at any time into one share of Common Stock and automatically converts into one share of Common Stock upon any sale or transfer other than to related individuals or certain other events as set forth in our Restated Certificate of Incorporation. Each share of our Common Stock, \$.01 par value (the "Common Stock") has noncumulative voting rights of one vote per share. The Class A Stock and the Common Stock are entitled to share equally, on a share-for-share basis, in any cash dividends declared by the Board of Directors, and the holders of the Common Stock are entitled to elect 25%, rounded up to the nearest whole number, of the members comprising the Board of Directors. During fiscal 2017, our Board of Directors adopted a dividend policy under which it intends to pay an annual cash dividend on our Common Stock and Class A Stock during the first quarter of each fiscal year.

NOTE 12 — STOCK-BASED COMPENSATION PLANS

At our annual meeting of stockholders on October 29, 2014, our stockholders approved a new equity incentive plan (the "2014 Omnibus Plan") under which awards of options and other stock-based awards may be made to employees, officers or non-employee directors of our Company. A total of 1,000,000 shares of Common Stock are authorized for grants of awards thereunder, which may be in the form of options, restricted stock, RSUs, stock appreciation rights ("SARs"), performance shares, performance units, Common Stock or dividends and dividend equivalents. As of June 29, 2023, there were 546,654 shares of Common Stock that remained authorized for future grants of awards, subject to the limitations set below. Under the terms of the Omnibus Plan, the total number of shares of Common Stock with respect to which options or SARs may be granted in any calendar year to any participant may not exceed 500,000 shares (this limit applies separately with respect to each type of award). Additionally, under the terms of the 2014 Omnibus Plan, for awards of restricted stock, RSUs, performance shares or other stock-based awards that are intended to qualify as performance-based compensation: (i) the total number of shares of Common Stock that may be granted in any calendar year to any participant may not exceed 250,000 shares (this limit applies separately to each type of award) and (ii) the maximum amount that may be paid to any participant for awards that are payable in cash or property other than Common Stock in any calendar year is \$5,000. During fiscal 2017, the Board of Directors adopted an equity grant cap which further restricted the number of awards that could be made to any one participant or in the aggregate. The equity grant cap limited the number of awards to 250,000 awards to all participants and 20,000 awards to any one participant in a fiscal year. Except as set forth in the 2014 Omnibus Plan, RSUs have vesting periods of three years for awards to employees and one year for awards to non-employee members of the Board of Directors. Recipients of RSUs have the option to defer receipt of vested shares until a specified later date, typically soon after separation from the Company. We issue new shares of Common Stock upon the vesting of RSUs.

The fair value of RSUs is generally determined based on the market price of our Common Stock on the date of grant. The fair value of RSUs granted for the years ended June 29, 2023, June 30, 2022 and June 24, 2021 was \$4,769, \$4,065 and \$3,829, respectively.

The following is a summary of RSU activity for the year ended June 29, 2023:

<u>Restricted Stock Units</u>	<u>Shares</u>	<u>Weighted-Average Grant-Date Fair Value</u>
Outstanding at June 30, 2022	142,239	\$ 70.42
Granted	64,351	\$ 74.11
Vested ^(a)	(33,607)	\$ 88.62
Forfeited	(17,971)	\$ 71.60
Outstanding at June 29, 2023	<u>155,012</u>	<u>\$ 67.87</u>

(a) The number of RSUs vested includes shares that were withheld on behalf of employees to satisfy statutory tax withholding requirements.

At June 29, 2023 there were 38,907 RSUs outstanding that were vested but deferred. At June 30, 2022 there were 23,705 RSUs outstanding that were vested but deferred. The non-vested RSUs at June 29, 2023 will vest over a weighted-average period of 1.4 years. The fair value of RSUs that vested for the years ended June 29, 2023, June 30, 2022 and June 24, 2021 was \$2,978, \$3,274 and \$2,706, respectively.

The following table summarizes compensation cost charged to earnings for all equity compensation plans and the total income tax benefit recognized for the last three fiscal years:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
Compensation cost charged to earnings	\$ 3,565	\$ 3,565	\$ 2,908
Income tax benefit recognized	891	891	727

At June 29, 2023, there was \$4,133 of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under our stock-based compensation plans. We expect to recognize that cost over a weighted-average period of 1.4 years.

NOTE 13 — CASH DIVIDENDS

Our Board of Directors declared and we paid the following cash dividends in fiscal 2023 and fiscal 2022:

Declaration Date	Record Date	Dividend Per Share(a)	Total Amount	Payment Date
May 2, 2023	June 1, 2023	\$ 1.50	\$ 17,381	June 22, 2023
November 3, 2022	December 2, 2022	\$ 1.00	\$ 11,572	December 21, 2022
July 7, 2022	August 12, 2022	\$ 2.25	\$ 25,981	August 31, 2022
July 8, 2021	August 10, 2021	\$ 3.00	\$ 34,534	August 25, 2021

(a) The dividends declared on July 8, 2021 and July 7, 2022 include both the annual and special dividend declared on such date.

On July 18, 2023, our Board of Directors declared a special cash dividend of \$1.20 per share and a regular annual cash dividend of \$0.80 per share on all issued and outstanding shares of Common Stock and Class A Stock of the Company. Refer to Note 20 — “Subsequent Event” below.

NOTE 14 — EMPLOYEE BENEFIT PLANS

We maintain a contributory plan established pursuant to the provisions of section 401(k) of the Internal Revenue Code. The plan provides retirement benefits for all nonunion employees meeting minimum age and service requirements. We currently match 100% of the first three percent contributed by each employee and 50% of the next two percent contributed, up to certain maximums specified in the plan. Expense for the 401(k) plan was as follows for the last three fiscal years:

	Year Ended June 29, 2023	Year Ended June 30, 2022	Year Ended June 24, 2021
401(k) plan expense	\$ 2,746	\$ 2,204	\$ 2,119

Starting in fiscal 2023 we now offer a non-qualified deferred compensation plan to provide executives with the opportunity to accumulate assets for retirement on a tax-deferred basis (the “Plan”). Participants in the Plan can defer up to 80% of their base salary and up to 100% of performance-based compensation. The compensation deferred under this Plan is credited with earnings and losses as determined by the rate of return of reference investments selected by the participants. Participants are fully vested in their respective deferrals and earnings. We may also make discretionary contributions, which vest three years from the crediting date, at full vesting age, or other events as defined and described in the Plan. We invest in corporate owned life insurance contracts (“COLI”) on the lives of designated individuals that are held in a Rabbi Trust (“Trust”) to fund the Plan obligations. The Trust is the owner and beneficiary of such insurance contracts. Our promise to pay amounts deferred under this Plan is an unsecured obligation. Participant’s benefits can be paid out as a lump sum or in annual installments over a term of up to 10 years. The COLI investments are recorded at cash surrender value. The cash surrender value of the life insurance contracts was \$282 at June 29, 2023, and is included in Other Long Term Assets in the accompanying Consolidated Balance Sheets. The balances due to participants in the Plan were \$304 as of June 29, 2023, and are included in and Other Long Term Liabilities in the accompanying Consolidated Balance Sheets. Matching contribution expense was immaterial for the periods presented.

Virtually all of our salaried employees participate in our Sanfilippo Value Added Plan (as amended, the “SVA Plan”), which is a cash incentive plan (an economic value added-based program) administered by our Compensation and Human Resources Committee. We accrue expense related to the SVA Plan in the annual period that the economic performance underlying such performance occurs. This method of expense recognition properly matches the expense associated with improved economic performance with the period the improved performance occurs on a systematic and rational basis. The SVA Plan payments, if any, are paid to participants in the first quarter of the following fiscal year.

NOTE 15 — RETIREMENT PLAN

The Supplemental Employee Retirement Plan (“SERP”) is an unfunded, non-qualified benefit plan that will provide eligible participants with monthly benefits upon retirement, disability or death, subject to certain conditions. Benefits paid to retirees are based on age at retirement, years of credited service, and average compensation. We use our fiscal year end as the measurement date for the obligation calculation. Accounting guidance in ASC Topic 715, *Compensation — Retirement Benefits*, requires the recognition of the funded status of the SERP on the Consolidated Balance Sheet. Actuarial gains or losses, prior service costs or credits and transition obligations that have not yet been recognized are recorded as a component of “Accumulated Other Comprehensive Loss” (“AOCL”).

The following table presents the changes in the projected benefit obligation for the fiscal years ended:

	June 29, 2023	June 30, 2022
Change in projected benefit obligation		
Projected benefit obligation at beginning of year	\$ 29,511	\$ 35,547
Service cost	801	991
Interest cost	1,366	1,018
Actuarial gain	(3,007)	(7,390)
Benefits paid	(654)	(655)
Projected benefit obligation at end of year	<u>\$ 28,017</u>	<u>\$ 29,511</u>

The accumulated benefit obligation, which represents benefits earned up to the measurement date, was \$25,277 and \$25,960 at June 29, 2023 and June 30, 2022, respectively.

Components of the actuarial (gain) loss are presented below for the fiscal years ended:

	June 29, 2023	June 30, 2022	June 24, 2021
Actuarial (Gain) Loss			
Change in assumed pay increases	\$ (70)	\$ 1,698	\$ 3,319
Change in discount rate	(1,584)	(8,184)	(1,134)
Change in mortality assumptions	—	75	(329)
Other	(1,353)	(979)	339
Actuarial (gain) loss	<u>\$ (3,007)</u>	<u>\$ (7,390)</u>	<u>\$ 2,195</u>

The components of the net periodic pension cost are as follows for the fiscal years ended:

	June 29, 2023	June 30, 2022	June 24, 2021
Service cost	\$ 801	\$ 991	\$ 944
Interest cost	1,366	1,018	858
Recognized loss amortization	28	1,455	1,183
Prior service cost amortization	—	—	478
Net periodic pension cost	<u>\$ 2,195</u>	<u>\$ 3,464</u>	<u>\$ 3,463</u>

The most significant assumption related to our SERP is the discount rate used to calculate the actuarial present value of benefit obligations to be paid in the future.

We used the following assumptions to calculate the benefit obligation of our SERP as of the following dates:

	June 29, 2023	June 30, 2022
Discount rate	5.12%	4.68%
Average rate of compensation increases	4.50%	4.50%
Bonus payment	45% - 110% of base, paid 4 of 5 years	45% - 110% of base, paid 4 of 5 years

We used the following assumptions to calculate the net periodic costs of our SERP as follows for the fiscal years ended:

	June 29, 2023	June 30, 2022	June 24, 2021
Discount rate	4.68%	2.89%	2.69%
Rate of compensation increases	4.50%	3.38%	3.38%
Mortality	Pri-2012 white collar with MP- 2021 scale	Pri-2012 white collar with MP- 2020 scale	Pri-2012 white collar with MP- 2019 scale
Bonus payment	45% - 110% of base, paid 4 of 5 years	45% - 110% of base, paid 4 of 5 years	60% - 95% of base, paid 4 of 5 years

The assumed discount rate is based, in part, upon a discount rate modeling process that considers both high quality long-term indices and the duration of the SERP relative to the durations implicit in the broader indices. The discount rate is utilized principally in calculating the actuarial present value of our obligation and periodic expense pursuant to the SERP. To the extent the discount rate increases or decreases, our SERP obligation is decreased or increased, respectively.

The following table presents the benefits expected to be paid in the next ten fiscal years:

<u>Fiscal Year</u>	
2024	\$ 1,364
2025	1,046
2026	1,282
2027	1,112
2028	1,900
2029 — 2033	8,595

At June 29, 2023 and June 30, 2022, the current portion of the SERP liability was \$1,364 and \$625, respectively, and recorded in the caption “Accrued payroll and related benefits” on the Consolidated Balance Sheets.

The following table presents the components of AOCL that have not yet been recognized in net pension expense:

	June 29, 2023	June 30, 2022
Unrecognized net loss	\$ (41)	\$ (3,076)
Tax effect	(163)	596
Net amount unrecognized	<u>\$ (204)</u>	<u>\$ (2,480)</u>

NOTE 16 — ACCUMULATED OTHER COMPREHENSIVE LOSS

The table below sets forth the changes to accumulated other comprehensive loss (“AOCL”) for the last two fiscal years. These changes are all related to our defined benefit pension plan.

Changes to AOCL ^(a)	Year Ended June 29, 2023	Year Ended June 30, 2022
Balance at beginning of period	\$ (2,480)	\$ (9,025)
Other comprehensive income before reclassifications	3,007	7,390
Amounts reclassified from accumulated other comprehensive loss	28	1,455
Tax effect	(759)	(2,300)
Net current-period other comprehensive income	2,276	6,545
Balance at end of period	<u>\$ (204)</u>	<u>\$ (2,480)</u>

^(a) Amounts in parenthesis indicate debits/expense.

The reclassifications out of accumulated other comprehensive loss for the last two fiscal years were as follows:

Reclassifications from AOCL to earnings ^(b)	Year Ended June 29, 2023	Year Ended June 30, 2022	Affected line item in the Consolidated Statements of Comprehensive Income
Amortization of defined benefit pension items:			
Unrecognized net loss	(28)	(1,455)	Pension expense (excluding service costs)
Tax effect	7	378	Income tax expense
Amortization of defined pension items, net of tax	<u>\$ (21)</u>	<u>\$ (1,077)</u>	

^(b) Amounts in parenthesis indicate debits to expense. See Note 15 — “Retirement Plan” above for additional details.

NOTE 17 — PRODUCT TYPE SALES MIX

The following table summarizes sales by product type as a percentage of total gross sales. The information is based upon gross sales, rather than net sales, because certain adjustments, such as promotional discounts, are not allocable to product types, for the fiscal year ended:

Product Type	June 29, 2023	June 30, 2022	June 24, 2021
Peanuts & Peanut Butter	19.0%	18.0%	19.3%
Pecans	11.4	10.1	10.0
Cashews & Mixed Nuts	20.7	22.6	23.3
Walnuts	5.6	5.8	6.2
Almonds	8.8	10.2	10.8
Trail & Snack Mixes	27.2	26.9	24.7
Other	7.3	6.4	5.7
	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>

NOTE 18 — VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

The following table details the activity in various allowance and reserve accounts.

Description	Balance at Beginning of Period	Additions	Deductions	Balance at End of Period
June 29, 2023				
Allowance for doubtful accounts	\$ 267	\$ 54	\$ (38)	\$ 283
Reserve for cash discounts	1,150	18,353	(18,403)	1,100
Reserve for customer deductions	6,492	31,906	(30,789)	7,609
Total	<u>\$ 7,909</u>	<u>\$ 50,313</u>	<u>\$ (49,230)</u>	<u>\$ 8,992</u>
June 30, 2022				
Allowance for doubtful accounts	\$ 291	\$ 122	\$ (146)	\$ 267
Reserve for cash discounts	1,050	17,625	(17,525)	1,150
Reserve for customer deductions	6,617	30,294	(30,419)	6,492
Total	<u>\$ 7,958</u>	<u>\$ 48,041</u>	<u>\$ (48,090)</u>	<u>\$ 7,909</u>
June 24, 2021				
Allowance for doubtful accounts	\$ 391	\$ 203	\$ (303)	\$ 291
Reserve for cash discounts	975	15,548	(15,473)	1,050
Reserve for customer deductions	5,477	28,516	(27,376)	6,617
Total	<u>\$ 6,843</u>	<u>\$ 44,267</u>	<u>\$ (43,152)</u>	<u>\$ 7,958</u>

NOTE 19 — GARYSBURG, NORTH CAROLINA FACILITY

In October 2019, we experienced a fire at our peanut processing facility located in Garysburg, North Carolina. During fiscal 2020, the building and roof were repaired and brought back to their original condition.

We completed shelling of the 2019 peanut crop during the second quarter of fiscal 2021 and the facility was used to store and ship inshell peanuts through the remainder of fiscal 2021, at which time the Company decided to permanently cease all operations at the Garysburg facility.

During the first quarter of fiscal 2022, we sold the Garysburg property and remaining equipment located at the property to a third party for \$4,000, subject to customary adjustments to reflect closing costs, which resulted in a \$2,349 gain.

NOTE 20 — SUBSEQUENT EVENT

On July 18, 2023, our Board of Directors declared a special cash dividend of \$1.20 per share and a regular annual cash dividend of \$0.80 per share on all issued and outstanding shares of Common Stock and Class A Stock of the Company (the "August 2023 Dividends"). The August 2023 Dividends will be paid on September 13, 2023 to stockholders of record as of the close of business on August 22, 2023.

Item 9 — Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 9A — Controls and Procedures

Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”), we conducted an evaluation of the effectiveness of our disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act, as of the end of the period covered by this Annual Report on Form 10-K. Based on this evaluation, our CEO and CFO concluded that, as of June 29, 2023, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and is accumulated and reported to our management, including our CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

Management’s Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f) and 15d-15(f). Under the supervision and with the participation of our management, including our CEO and CFO, we carried out an evaluation of the effectiveness of our internal control over financial reporting as of June 29, 2023, based on the *Internal Control-Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, our management has concluded that our internal control over financial reporting was effective as of June 29, 2023.

The effectiveness of our internal control over financial reporting as of June 29, 2023 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report contained in this Annual Report on Form 10-K.

Changes in Internal Control over Financial Reporting

There were no changes in internal control over financial reporting that occurred during the fourth fiscal quarter ended June 29, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls

Our management, including our CEO and CFO, does not expect that the Disclosure Controls and Procedures or our Internal Control over Financial Reporting will prevent or detect all errors and all fraud. A control, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control’s objectives will be met. Further, the design of a control must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all internal controls, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any control is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with associated policies or procedures. Because of the inherent limitations in a cost-effective control, misstatements due to error or fraud may occur and may not be detected.

Item 9B — Other Information

Rule 10b5-1 Trading Arrangement

During the three months ended June 29, 2023, none of our directors or officers (as defined in Rule 16a-1(f) of the Exchange Act) adopted, terminated or modified a Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement (as such terms are defined in Item 408 of Regulation S-K).

Item 9C — Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable

PART III

Item 10 — Directors, Executive Officers and Corporate Governance

The Sections entitled “Nominees for Election by The Holders of Common Stock,” “Nominees for Election by The Holders of Class A Stock,” “Section 16(a) Beneficial Ownership Reporting Compliance” and “Corporate Governance — Board Meetings and Committees — Audit Committee” and “Corporate Governance — Independence of the Audit Committee” of our Proxy Statement for the 2023 Annual Meeting and filed pursuant to Regulation 14A are incorporated herein by reference. Other certain information relating to the directors and executive officers of the Company is included immediately before Part II of this Report.

We have adopted a Code of Ethics applicable to the principal executive, financial and accounting officers (“Code of Ethics”) and a separate Code of Conduct applicable to all employees and directors generally (“Code of Conduct”). The Code of Ethics and Code of Conduct are available on our website at <http://www.jbssinc.com>.

Item 11 — Executive Compensation

The Sections entitled “Compensation of Directors and Executive Officers,” “Compensation Discussion and Analysis,” “Compensation Committee Interlocks and Insider Participation” and “Compensation Committee Report” of our Proxy Statement for the 2023 Annual Meeting are incorporated herein by reference.

Item 12 — Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The Section entitled “Security Ownership of Certain Beneficial Owners and Management” of our Proxy Statement for the 2023 Annual Meeting is incorporated herein by reference. Other certain information relating to the directors and executive officers of the Company is included immediately before Part II of this Report.

Item 13 — Certain Relationships and Related Transactions, and Director Independence

The Sections entitled “Corporate Governance — Independence of the Board of Directors” and “Review of Related Party Transactions” of our Proxy Statement for the 2023 Annual Meeting are incorporated herein by reference. Other certain information relating to the executive officers and certain of the directors of the Company is included immediately before Part II of this Report.

Item 14 — Principal Accounting Fees and Services

The information under the proposal entitled “Ratify the Audit Committee’s Appointment of PricewaterhouseCoopers LLP as our Independent Registered Public Accounting Firm for the 2024 fiscal year” of our Proxy Statement for the 2023 Annual Meeting is incorporated herein by reference.

PART IV

Item 15 — Exhibits, Financial Statement Schedules

(a) (1) Financial Statements

The following financial statements are included in Part II, Item 8 — “Financial Statements and Supplementary Data”:

Report of Independent Registered Public Accounting Firm

Consolidated Statements of Comprehensive Income for the Year Ended June 29, 2023, the Year Ended June 30, 2022 and the Year Ended June 24, 2021

Consolidated Balance Sheets as of June 29, 2023 and June 30, 2022

Consolidated Statements of Stockholders’ Equity for the Year Ended June 29, 2023, the Year Ended June 30, 2022 and the Year Ended June 24, 2021

Consolidated Statements of Cash Flows for the Year Ended June 29, 2023, the Year Ended June 30, 2022 and the Year Ended June 24, 2021

Notes to Consolidated Financial Statements

(a) (2) Financial Statement Schedules

All schedules are omitted because they are not applicable or the required information is shown in the Consolidated Financial Statements or Notes thereto.

(a) (3) Exhibits

The exhibits required by Item 601 of Regulation S-K and filed herewith are listed in the Exhibit Index which follows the signature page and immediately precedes the exhibits filed.

(b) Exhibits

See Item 15(a)(3) above.

(c) Financial Statement Schedules

See Item 15(a)(2) above.

Item 16 — Form 10-K Summary

None.

EXHIBIT INDEX
(Pursuant to Item 601 of Regulation S-K)

Exhibit No.	Description
3.1	<u>Restated Certificate of Incorporation of the Company (incorporated by reference from Exhibit 3.1 to the Form 10-Q for the quarter ended March 24, 2005)</u>
3.2	<u>Amended and Restated Bylaws of the Company (incorporated by reference from Exhibit 3.2 to the Form 10-K for the fiscal year ended June 25, 2015)</u>
4.1	<u>Description of Company's Securities</u>
*10.1	<u>Amended and Restated John B. Sanfilippo & Son, Inc. Split-Dollar Insurance Agreement Number Two among Michael J. Valentine, as trustee of the Valentine Life Insurance Trust, Mathias Valentine, Mary Valentine and the Company, dated December 31, 2003 (incorporated by reference from Exhibit 10.35 to the Form 10-Q for the quarter ended December 25, 2003)</u>
*10.2	<u>Amendment, dated February 12, 2004, to Amended and Restated John B. Sanfilippo & Son, Inc. Split-Dollar Insurance Agreement Number Two among Michael J. Valentine, as trustee of the Valentine Life Insurance Trust, Mathias Valentine, Mary Valentine and the Company, dated December 31, 2003 (incorporated by reference from Exhibit 10.47 to the Form 10-Q for the quarter ended March 25, 2004)</u>
*10.3	<u>Restated Supplemental Retirement Plan (incorporated by reference from Exhibit 10.16 to the Form 10-K for the fiscal year ended June 28, 2007)</u>
*10.4	<u>Form of Indemnification Agreement (incorporated by reference from Exhibit 10.01 to the Form 8-K filed on May 5, 2009)</u>
*10.5	<u>2014 Omnibus Incentive Plan (incorporated by reference from Exhibit 4.1 to the Registration Statement on Form S-8 filed on October 28, 2014)</u>
*10.6	<u>Amendment No. 1 to the 2014 Omnibus Incentive Plan (incorporated by reference from Exhibit 10.12 to the Form 10-K for the year ended June 30, 2016)</u>
*10.7	<u>Form of Non-Employee Director Restricted Stock Unit Award Agreement (non-deferral) under 2014 Omnibus Plan (fiscal 2020, 2021 and 2022 awards cycle) (incorporated by reference from Exhibit 10.38 to the Form 10-Q for the quarter ended December 24, 2015)</u>
*10.8	<u>Form of Non-Employee Director Restricted Stock Unit Award Agreement (deferral) under 2014 Omnibus Plan (fiscal 2021 and 2022 awards cycle) (incorporated by reference from Exhibit 10.39 to the Form 10-Q for the quarter ended December 24, 2015)</u>
*10.9	<u>Form of Employee Restricted Stock Unit Award Agreement under 2014 Omnibus Plan (fiscal 2021 and 2022 awards cycle) (incorporated by reference from Exhibit 10.10 to the Form 10-Q for the quarter ended December 24, 2020)</u>
*10.10	<u>Form of Employee Restricted Stock Unit Award Agreement under 2014 Omnibus Plan (fiscal 2023 awards cycle) (incorporated by reference from Exhibit 10.10 to the Form 10-Q for the quarter ended December 29, 2022)</u>
*10.11	<u>Amended and Restated Sanfilippo Value Added Plan, dated August 20, 2015 (incorporated by reference from Exhibit 10.11 to the Form 10-K for the year ended June 25, 2015)</u>
10.12	<u>Amended and restated Credit Agreement dated as of March 5, 2020, by and among John B. Sanfilippo & Son, Inc., Wells Fargo Capital Finance, LLC (f/k/a WFF), as a lender and the administrative agent, and Southwest Georgia Farm Credit, ACA, as a lender. (incorporated by reference from Exhibit 10.1 to the Form 8-K filed on March 11, 2020)</u>
10.13	<u>First Amendment to Amended and Restated Credit Agreement dated as of May 8, 2023</u>

Exhibit No.	Description
*10.14	Amended and Restated John B. Sanfilippo & Son, Inc. Split-Dollar Insurance Agreement Number One among John E. Sanfilippo, as trustee of the Jasper and Marian Sanfilippo Irrevocable Trust, dated September 23, 1990, Jasper B. Sanfilippo, Marian R. Sanfilippo and Registrant, dated December 31, 2003 (incorporated by reference from Exhibit 10.34 to the Form 10-Q for the quarter ended December 25, 2003)
*10.15	Amendment, dated February 12, 2004, to Amended and Restated John B. Sanfilippo & Son, Inc. Split-Dollar Insurance Agreement Number One among John E. Sanfilippo, as trustee of the Jasper and Marian Sanfilippo Irrevocable Trust, dated September 23, 1990, Jasper B. Sanfilippo, Marian R. Sanfilippo and Registrant, dated December 31, 2003 (incorporated by reference from Exhibit 10.46 to the Form 10-Q for the quarter ended March 25, 2004)
*10.16	Split-Dollar Insurance Agreement Notice of Termination and Purchase Agreement, by and among John B. Sanfilippo & Son, Inc., John E. Sanfilippo, on behalf of and as sole trustee of the Jasper and Marian Sanfilippo Irrevocable Trust, dated September 23, 1990 and Marian R. Sanfilippo, dated December 24, 2021 (incorporated by reference from Exhibit 10.15 to the Form 10-Q for the quarter ended March 24, 2022)
*10.17	Amendment No. 1 to the Split-Dollar Insurance Agreement Notice of Termination and Purchase Agreement, by and among John B. Sanfilippo & Son, Inc., John E. Sanfilippo, on behalf of and as sole trustee of the Jasper and Marian Sanfilippo Irrevocable Trust, dated September 23, 1990 and Marian R. Sanfilippo, dated February 21, 2022 (incorporated by reference from Exhibit 10.16 to the Form 10-Q for the quarter ended March 24, 2022)
*10.18	Separation Benefits & General Release Agreement, effective June 29, 2023, between John B. Sanfilippo & Son, Inc. and Shayn E. Wallace (incorporated by reference from Exhibit 10.1 to the Form 8-K filed on June 30, 2023)
*10.19	Retirement Agreement and General Release, dated January 23, 2023 by and between John B. Sanfilippo & Son, Inc. and Michael Valentine (incorporated by reference from Exhibit 10.20 to the Form 10-Q for the quarter ended March 30, 2023)
*10.20	Nonqualified Deferred Compensation Plan Adoption Agreement of the Company dated as of November 22, 2022 (incorporated by reference from Exhibit 10.18 to the Form 10-Q for the quarter ended December 29, 2022)
*10.21	John B. Sanfilippo & Son, Inc. Nonqualified Deferred Compensation Plan dated as of November 22, 2022 (incorporated by reference from Exhibit 10.19 to the Form 10-Q for the quarter ended December 29, 2022)
14	Code of Ethics, as amended (incorporated by reference from Exhibit 14 to the Form 10-K for the fiscal year ended June 25, 2015)
21	Subsidiaries of the Company
23	Consent of PricewaterhouseCoopers LLP
31.1	Certification of Jeffrey T. Sanfilippo pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended
31.2	Certification of Frank S. Pellegrino pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended
32.1	Certification of Jeffrey T. Sanfilippo pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended
32.2	Certification of Frank S. Pellegrino pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended
101.INS	Inline eXtensible Business Reporting Language (XBRL) Instance Document—the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Indicates a management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

JOHN B. SANFILIPPO & SON, INC.

Date: August 23, 2023

By: /s/ Jeffrey T. Sanfilippo

Jeffrey T. Sanfilippo
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Jeffrey T. Sanfilippo</u> Jeffrey T. Sanfilippo	Chief Executive Officer and Director (Principal Executive Officer)	August 23, 2023
<u>/s/ Frank S. Pellegrino</u> Frank S. Pellegrino	Chief Financial Officer, Executive Vice President, Finance and Administration and Treasurer (Principal Financial Officer)	August 23, 2023
<u>/s/ Michael J. Finn</u> Michael J. Finn	Vice President, Corporate Controller (Principal Accounting Officer)	August 23, 2023
<u>/s/ Pamela Forbes Lieberman</u> Pamela Forbes Lieberman	Director	August 23, 2023
<u>/s/ Mercedes Romero</u> Mercedes Romero	Director	August 23, 2023
<u>/s/ James J. Sanfilippo</u> James J. Sanfilippo	Director	August 23, 2023
<u>/s/ Jasper B. Sanfilippo, Jr.</u> Jasper B. Sanfilippo, Jr.	Director	August 23, 2023
<u>/s/ John E. Sanfilippo</u> John E. Sanfilippo	Director	August 23, 2023
<u>/s/ Lisa A. Sanfilippo</u> Lisa A. Sanfilippo	Director	August 23, 2023
<u>/s/ Ellen C. Taaffe</u> Ellen C. Taaffe	Director	August 23, 2023
<u>/s/ James A. Valentine</u> James A. Valentine	Director	August 23, 2023

Michael J. Valentine

**DESCRIPTION OF THE COMPANY'S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934**

As of August 23, 2023, John B. Sanfilippo & Son, Inc. (the "Company") has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"): our Common Stock, par value \$0.01 per share ("Common Stock"). Our Class A Common Stock, \$0.01 par value per share ("Class A Stock"), is not registered under the Exchange Act.

The following description is a summary and does not purport to be complete. It is subject to and qualified in its entirety by reference to our Restated Certificate of Incorporation ("Restated Certificate") and our Amended and Restated Bylaws (the "Bylaws"), each of which are incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this Exhibit 4.1 is a part. We encourage you to read our Restated Certificate, our Bylaws and the applicable provisions of the Delaware General Corporation Law for additional information.

Authorized Capital Shares

Our authorized capital shares consist of 17,000,000 shares of Common Stock, 10,000,000 shares of Class A Stock, and 500,000 shares of preferred stock, \$0.01 par value per share ("Preferred Stock"). The outstanding shares of our Common Stock and Class A Stock are fully paid and nonassessable.

Voting Rights

Pursuant to our Restated Certificate, so long as the total number of shares of Class A Stock outstanding is greater than or equal to 12.5% of the total number of shares of Class A Stock and Common Stock outstanding (see "Conversion Rights" below), the holders of Common Stock voting as a class are entitled to elect such number (rounded to the next highest number in the case of a fraction) of directors as equals 25% of the total number of directors constituting the full board of directors of the Company (the "Board of Directors"). The holders of Class A Stock voting as a class are entitled to elect the remaining directors. With respect to all matters other than the election of directors or any matters for which class voting is required by law, the holders of Common Stock and the holders of Class A Stock will vote together as a single class, and the holders of Common Stock will be entitled to one vote per share of Common Stock and the holders of Class A Stock will be entitled to 10 votes per share of Class A Stock.

Our Restated Certificate does not entitle holders of Common Stock to cumulative voting. However, solely with respect to the election of directors, the Restated Certificate entitles, but does not require, each holder of Class A Stock, in person or by proxy, to either (a) vote the number of shares of Class A Stock owned by such holder for as many persons as there are directors to be elected by holders of Class A Stock ("Class A Directors"), or (b) cumulate said votes (by multiplying the number of shares of Class A Stock owned by such holder by the number of candidates for election as a Class A Director) and either (i) give one candidate all of the cumulated votes, or (ii) distribute the cumulated votes among such candidates as the holder sees fit.

Dividend Rights

The holders of Common Stock and Class A Stock are entitled to receive dividends, if any, as may be declared from time to time by the Board of Directors in its discretion out of funds legally available for the payment of dividends. When and as dividends are declared on any shares of Common Stock and Class A Stock, whether payable in cash, property or securities of the Company, the holders of Common Stock and Class A Stock will be entitled to share equally, share for share, in such dividends.

Conversion Rights

Each share of Class A Stock is convertible, from time to time at the option of the holder and automatically upon the occurrence of certain events, into one share of Common Stock. Our Common Stock has no conversion rights.

Upon the sale, assignment, pledge or other transfer, other than a "Permitted Transfer" (as that term is defined in the Restated Certificate), of any shares or any interest in shares of Class A Stock to any person or entity, all such transferred shares of Class A Stock will be converted automatically into an equal number of shares of Common Stock.

All outstanding shares of Class A Stock will be converted automatically into an equal number of shares of Common Stock upon the date on which the number of outstanding shares of Class A Stock constitutes less than 12.5% of the total number of outstanding shares of Common Stock and Class A Stock.

Liquidation Rights

Holders of Common Stock and Class A Stock will share ratably in all assets legally available for distribution to our stockholders in the event of dissolution.

Other Rights and Preferences

Our Common Stock has no sinking fund or redemption provisions or preemptive or exchange rights.

Listing

The Common Stock is traded on The Nasdaq Global Select Market under the trading symbol “JBSS.”

Provisions in the Restated Certificate and the Bylaws

The Restated Certificate and the Bylaws contain provisions that could make the Company a less attractive target for a hostile takeover and could make more difficult or discourage a merger proposal, a tender offer or a proxy contest. Such provisions include:

- a requirement that stockholder-nominated director nominees be nominated in advance of the meeting at which directors are elected and that specific information be provided in connection with such nomination;
- the ownership and the rights of Class A Stock held by the Sanfilippo Group and Valentine Group (as those terms as defined in our Definitive Proxy Statement filed from time to time with the Securities and Exchange Commission); and
- the ability of the Board of Directors to issue additional shares of Common Stock or Preferred Stock without the approval of stockholders.

Preferred Stock

The Preferred Stock may be issued from time to time in one or more series. The authority is expressly vested in the Board of Directors to establish and designate the series and to fix the rights, preferences, privileges and restrictions of any series of the Preferred Stock, including without limitation, those relating to any dividend rights and terms, conversion rights, voting rights, redemption rights and terms, liquidation preferences and sinking fund terms.

AMENDED AND RESTATED CREDIT AGREEMENT

by and among

JOHN B. SANFILIPPO & SON, INC.

as Borrower,

THE LENDERS THAT ARE SIGNATORIES HERETO

as the Lenders,

and

WELLS FARGO CAPITAL FINANCE, LLC

as the Arranger and Administrative Agent,

Dated as of March 5, 2020

(as amended by that certain First Amendment to Amended and Restated Credit Agreement dated as of May 8, 2023)

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	. Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Term SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 2.13(d)(iii), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark, prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to a Borrower. Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service. 4
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"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.	1
"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.	3
"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).	3
"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.13(d)(iii)(A).	5
"Benchmark Replacement" means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Agent and Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement shall be deemed to be the Floor for the purposes of the Agreement and the other Loan Documents.	5

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Agent and Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time. 5

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark: 6

- (a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or 6
- (b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date. 6

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark: 6

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); 6
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors, the Federal Reserve Bank of 6

New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

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

"Benchmark Transition Start Date" means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).	7
"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.13(d)(iii) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.13(d)(iii).	7
"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.	40
"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.	42
"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).	42
"SOFR Deadline" has the meaning specified therefor in Section 2.13(b)(i) of the Agreement.	42
"SOFR Loan" means each portion of an Advance that bears interest at a rate determined by reference to Term SOFR (other than pursuant to clause (c) of the definition of "Base Rate").	42
"SOFR Margin" means, as of any date of determination, the following percentages per annum, based upon Average Margin Availability:	42
The SOFR Margin shall be adjusted in accordance with the foregoing on the first day of each calendar month.	42
"SOFR Notice" means a written notice in the form of Exhibit L-1 to the Agreement.	42

"SOFR Option" has the meaning specified therefor in Section 2.13(a) of the Agreement.

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"Term SOFR" means,

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

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"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion).	45
"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.	45
"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.	45
"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.3(a), 2.3(c) and 2.13(b), in each case, such day is also a Business Day.	46

EXHIBITS AND SCHEDULES

Exhibit A-1 Form of Assignment and Acceptance
Exhibit B-1 Form of Borrowing Base Certificate
Exhibit B-2 Form of Bank Product Provider Agreement
Exhibit C-1 Form of Compliance Certificate
Exhibit G-1 Form of Guaranty
Exhibit L-1 Form of SOFR Notice

Schedule A-1 Agent's Account
Schedule A-2 Authorized Persons
Schedule C-1 Commitments
Schedule D-1 Designated Account
Schedule E-1 Eligible Inventory Locations
Schedule P-1 Permitted Holders
Schedule P-2 Permitted Liens
Schedule 1.1 Definitions
Schedule 2.7(a) Cash Management Banks
Schedule 3.1 Conditions Precedent
Schedule 4.7(a) States of Organization
Schedule 4.7(b) Chief Executive Offices
Schedule 4.7(c) Organizational Identification Numbers
Schedule 4.7(d) Commercial Tort Claims
Schedule 4.8(c) Capitalization of Borrower's Subsidiaries
Schedule 4.10 Litigation
Schedule 4.13 Employee Benefits
Schedule 4.14 Environmental Matters
Schedule 4.15 Intellectual Property
Schedule 4.17 Deposit Accounts and Securities Accounts
Schedule 4.19 Permitted Indebtedness
Schedule 5.2 Collateral Reporting
Schedule 5.3 Financial Statements, Reports, Certificates
Schedule 6.6 Change in Nature of Business

AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement"), dated as of March 5, 2020, is by and among the lenders identified on the signature pages hereof (such lenders, together with their respective successors and permitted assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), **WELLS FARGO CAPITAL FINANCE, LLC** (f/k/a Wells Fargo Foothill, LLC), a Delaware limited liability company, as the arranger and administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), and **JOHN B. SANFILIPPO & SON, INC.**, a Delaware corporation ("Borrower").

WHEREAS, Borrower, Agent and certain Lenders are party to that certain Credit Agreement (as amended, supplemented or otherwise modified from time to time, the "Original Credit Agreement") dated as of February 7, 2008 (the "Original Closing Date"); and

WHEREAS, the parties to the Original Credit Agreement desire to amend and restate the Original Credit Agreement in its entirety pursuant to this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1. Definitions.

Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2. Accounting Terms.

All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Borrower notifies Agent that Borrower requests 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 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 Borrower 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 Borrower 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 "Borrower" is used in respect of a financial covenant or a related definition, it shall be understood to mean the Borrower and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, 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. Notwithstanding any changes in GAAP after the Closing Date, any lease of Borrower or any of its Subsidiaries that would be characterized as an operating lease under GAAP in effect on the Closing Date (whether such lease is entered into before or after the Closing Date) shall be treated as an operating lease and shall not constitute a Capital Lease under this Agreement and the other Loan Documents as a result of such changes in GAAP unless otherwise agreed to in writing by the Borrower and Agent.

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, however, 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). 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, 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 and any Record so transmitted shall constitute a representation and warranty as to the accuracy and completeness of the information contained therein. Any reference herein to the knowledge of Borrower and/or its Subsidiaries shall mean the knowledge of the Responsible Officers.

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 Eastern standard time or Eastern daylight saving time, as in effect in Atlanta, Georgia 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, (i) fees and interest shall be payable for the actual number of days elapsed (including the first day of such period but excluding the last day of such period) and (ii) such period shall in any event consist of at least one full day.

1.6. Schedules and Exhibits.

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

1.7. Divisions.

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

1.8. Effect of Amendment and Restatement; No Novation.

Upon the effectiveness of this Agreement, the Original Credit Agreement shall be amended and restated in its entirety by this Agreement. The Original Obligations outstanding on the Closing Date shall continue in full force and effect as Obligations under this Agreement, and the effectiveness of this Agreement shall not constitute a novation or repayment of the Original

Obligations. Without limiting the foregoing, upon the effectiveness of this Agreement, the outstanding "Revolving Advances" (as defined in the Original Credit Agreement) shall constitute Advances and the outstanding "Swing Line Advances" (as defined in the Original Credit Agreement) shall constitute Swing Loans. Such Original Obligations, together with any and all additional Obligations incurred by Borrower under this Agreement or under any of the other Loan Documents, shall continue to be secured by the Collateral, whether now existing or hereafter acquired and wheresoever located, all as more specifically set forth in the Loan Documents. Borrower hereby reaffirms its obligations, liabilities, grants of security interests, pledges and the validity of all covenants by it contained in any and all Loan Documents, as amended, supplemented or otherwise modified by this Agreement and by the other Loan Documents delivered on the Closing Date. Any and all references in any Loan Documents to the Original Credit Agreement shall be deemed to be amended to refer to this Agreement.

1.9. Rates. Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Term SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 2.13(d)(iii), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark, prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to a Borrower. Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

2. LOAN AND TERMS OF PAYMENT.

2.1. Revolver Advances.

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Lender with a Revolver Commitment agrees (severally, not jointly or jointly and severally) to make advances ("Advances") to Borrower in an amount at any one time outstanding not to exceed such Lender's Pro Rata Share of an amount equal to the lesser of (i) the Maximum Revolver Amount less the Letter of Credit Usage at such time, and (ii) the Borrowing Base at such time less the Letter of Credit Usage at such time. The Lenders with Revolver Commitments shall have no obligation to make additional Advances hereunder to the extent that

such additional Advances would cause Revolver Usage to exceed the Maximum Revolver Amount.

(b) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right to establish reserves against the Borrowing Base (including, without limitation, reserves in the amount of any taxes or tax liens that are the subject of a Permitted Protest) in such amounts, and with respect to such matters, as Agent in its Permitted Discretion shall deem necessary or appropriate, including reserves with respect to (i) sums that Borrower or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, and (ii) amounts owing by Borrower or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to the Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, suppliers or growers of agricultural products, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral, except, in the case of any landlord or warehouseman, to the extent that Agent shall have received a Collateral Access Agreement from such Person.

(c) 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 Advances, together with interest accrued thereon, shall be due and payable on the Latest Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

2.2. [Reserved.]

2.3. Borrowing Procedures and Settlements.

(a) **Procedure for Borrowing.** 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 2:00 p.m. (i) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, (ii) on the Business Day that is one Business Day prior to the requested Funding Date in the case of a request for a Base Rate Loan, and (iii) on the U.S. Government Securities Business Day that is three U.S. Government Securities Business Days prior to the requested Funding Date in the case of a request for a SOFR Loan, specifying (A) the amount of such Borrowing, and (B) the requested Funding Date (which shall be a Business Day); provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 2:00 p.m. on the applicable Business Day or U.S. Government Securities Business Day, as applicable. All Borrowing requests which are not made on-line via Agent's electronic platform or portal shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such Borrowings shall not be made until the completion of) Agent's authentication process (with results satisfactory to Agent) prior to the funding of any such requested Advance.

(b) **Making of Swing Loans.** In the case of an Advance (other than an Advance requested to be a SOFR Loan in accordance with Section 2.13) 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 \$15,000,000, or (ii) Swing Lender, in its sole discretion, agrees to make a Swing Loan notwithstanding the foregoing limitation, Swing Lender shall make an Advance (any such Advance made by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Swing Loan" and all such Advances being referred to as "Swing Loans") available to Borrower 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 an Advance hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Advances, 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 Advances and Obligations, and bear interest at the rate applicable from time to time to Advances that are Base Rate Loans.

(c) **Making of Advances.**

(i) In the event that Swing Lender is not obligated to make a Swing Loan, then promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a)(i), Agent shall notify the Lenders by telecopy, telephone, email, or other electronic form of transmission, of the requested Borrowing; such notification to be sent on the Business Day or U.S. Government Securities Business Day, as applicable, that is (A) in the case of a Base Rate Loan, at least one Business Day prior to the requested Funding Date, or (B) in the case of a SOFR Loan, prior to 2:00 p.m. at least three (3) U.S. Government Securities Business Days prior to the requested Funding Date. If Agent has notified the Lenders of a requested Borrowing on the Business Day that is one Business Day prior to the Funding Date, then each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 1:00 p.m. on the Business Day that is the requested Funding Date. After Agent's receipt of the proceeds of such Advances from the Lenders, Agent shall make the proceeds thereof available to Borrower 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 Advance, 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 12:30 p.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 Borrower 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 Borrower 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 Borrower 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 1:00 p.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 Borrower 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 Advance 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 Borrower of such failure to fund and, upon demand by Agent, Borrower 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 Advances composing such Borrowing (it being understood that the amount of such interest shall be payable only once). The failure of any Lender to make any Advance on any Funding Date shall not relieve any other Lender of any obligation hereunder to make an Advance on any Funding Date, but no Lender be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on any Funding Date.

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

(i) Agent hereby is authorized by Borrower and the Lenders, from time to time in Agent's sole discretion, (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) at any time that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, to make Advances to Borrower on behalf of the Lenders that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, but only so long as an Event of Default has occurred and remains continuing, (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations), but only so long as an Event of Default has occurred and remains continuing, or (3) to pay any other amount chargeable to Borrower pursuant to the terms of this Agreement, including Lender Group Expenses and the costs, fees, and expenses described in Section 9 (any of the Advances described in this Section 2.3(d)(i) shall be referred to as "Protective Advances"); provided, however, that after giving effect to any such Protective Advance, the total amount of Protective Advances then outstanding shall not exceed \$8,000,000, less the amount of any then outstanding Overadvances.

(ii) Any contrary provision of this Agreement 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 Advances (including Swing Loans) to Borrower notwithstanding that an Overadvance exists or thereby would be created, so long as (A) after giving effect to such Advances, the outstanding

Revolver Usage does not exceed the Borrowing Base by more than \$8,000,000, less the amount of any then outstanding Protective Advances, and (B) after giving effect to such Advances, 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 the immediately foregoing provisions, 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), and the Lenders with Revolver Commitments thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrower intended to reduce, within a reasonable time, the outstanding principal amount of the Advances to Borrower 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. Each Lender with a Revolver Commitment shall be obligated to settle with Agent as provided in Section 2.3(e) for the amount of such Lender's Pro Rata Share of any unintentional Overadvances by Agent reported to such Lender, any intentional Overadvances made as permitted under this Section 2.3(d)(ii), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses.

(iii) Each Protective Advance and each Overadvance shall be deemed to be an Advance hereunder, except that no Protective Advance or Overadvance shall be eligible to be a SOFR Loan and, prior to Settlement therefor, all payments on the Protective Advances shall be payable to Agent solely for its own account. The Protective Advances and Overadvances shall be repayable on demand, secured by the Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Advances that are Base Rate Loans. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrower in any way.

(e) **Settlement.** It is agreed that each Lender's funded portion of the Advances is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Advances. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrower) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Advances, the Swing Loans, and the Protective 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 (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Protective Advances, and (3) with respect to Borrower's or its Subsidiaries' Collections or payments received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 5:00 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 Advances, Swing Loans, and Protective Advances for the period

since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(c)(iii)): (y) if a Lender's balance of the Advances (including Swing Loans and Protective Advances) exceeds such Lender's Pro Rata Share of the Advances (including Swing Loans and Protective Advances) as of a Settlement Date, then Agent shall, by no later than 3:00 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 Advances (including Swing Loans and Protective Advances), and (z) if a Lender's balance of the Advances (including Swing Loans and Protective Advances) is less than such Lender's Pro Rata Share of the Advances (including Swing Loans and Protective Advances) as of a Settlement Date, such Lender shall no later than 3:00 p.m. on the Settlement Date transfer in immediately available funds to the 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 Advances (including Swing Loans and Protective 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 Protective Advances and, together with the portion of such Swing Loans or Protective Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Advances 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 Advances, Swing Loans, and Protective Advances is less than, equal to, or greater than such Lender's Pro Rata Share of the Advances, Swing Loans, and Protective 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 Borrower and allocable to the Lenders hereunder, and proceeds of Collateral. To the extent that a net amount is owed to any such Lender after such application, such net amount shall be distributed by Agent to that Lender as part of such next Settlement.

(iii) Between Settlement Dates, Agent, to the extent Protective Advances or Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any Collections or payments received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to the Protective Advances or Swing Loans. Between Settlement Dates, Agent, to the extent no Protective Advances or Swing Loans are outstanding, may pay over to Swing Lender any Collections or payments received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to Swing Lender's Pro Rata Share of the Advances. If, as of any Settlement Date, Collections or payments of Borrower or its Subsidiaries received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Advances 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, to be applied to the outstanding Advances of such Lenders, an amount such that each Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Advances. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Protective Advances, and each Lender (subject to the effect of agreements between Agent and individual Lenders) with respect to the Advances other than Swing

Loans and Protective 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.

(f) **Notation.** Agent shall record on its books the principal amount of the Advances owing to each Lender, including the Swing Loans owing to Swing Lender, and Protective Advances owing to Agent, and the interests therein of each Lender, from time to time and such records shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders.**

(i) Notwithstanding the provisions of Section 2.4(b)(ii), Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrower 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 Protective 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 Lender, 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 an Advance (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 Borrower (upon the request of Borrower and subject to the conditions set forth in Section 3.2) as if such Defaulting Lender had made its portion of Advances (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)(ii). Subject to the foregoing, Agent may hold and, in its discretion, re-lend to Borrower 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 2.12(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) through (c). 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 Lender, and Borrower 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 Borrower). 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 Borrower of its duties and obligations hereunder to Agent, Issuing Lender, 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 Borrower, at its 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 Borrower's rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

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

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

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrower 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 Borrower shall not be obligated to cash collateralize any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also Issuing Lender;

(C) if Borrower cash collateralize any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to this Section 2.3(g)(ii), Borrower 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 Lender 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 Lender 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 Lender 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 Lender, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Lender or Issuing Lender, as applicable, and Borrower to eliminate the Swing Lender's or Issuing Lender'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 Borrower pursuant to this Section 2.3(g)(ii) to Issuing Lender and Issuing Lender 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 Borrower pursuant to Section 2.12(d). Subject to Section 17.13, 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 Advances (other than Swing Loans and Protective 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 Advance (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

(a) Payments by Borrower.

(i) Except as otherwise expressly provided herein, all payments by Borrower 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 4:30 p.m. on the date specified herein; provided that, for the avoidance of doubt, any payments deposited into a Controlled Account shall be deemed not to be received by Agent on any Business Day unless immediately available funds have been

credited to Agent's Account on or prior to 4:30 p.m. on such Business Day. Any payment received by Agent in immediately available funds in Agent's Account later than 4:30 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 Borrower prior to the date on which any payment is due to the Lenders that Borrower will not make such payment in full as and when required, Agent may assume that Borrower has 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 Borrower does 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 with respect to Defaulting Lenders, all principal and interest payments 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 (other than fees or expenses that are for Agent's separate account) 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. All payments to be made hereunder by Borrower shall be remitted to Agent and all (subject to Section 2.4(b)(iv), hereof) such payments, and all proceeds of Collateral received by Agent, shall be applied, so long as no Application Event has occurred and is continuing, to reduce the balance of the Advances outstanding and, thereafter, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(ii) At any time that an Application Event has occurred and is continuing and except as otherwise provided 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, 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 Advances (other than Protective Advances and Swing Loans), until paid in full,

(J) *tenth*, ratably (i) ratably, to pay the principal of all Advances until paid in full, (ii) to Agent, to be held by Agent, for the benefit of Issuing Lender (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of Issuing Lender, 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), and (iii) ratably, up to the lesser of (y) the amount (after taking into account any amounts previously paid pursuant to this clause (iii) during the continuation of the applicable Application Event) of the most recently established Bank Product Reserve, which amount was established prior to the occurrence of, and not in contemplation of, the subject Application Event, and (z) \$3,000,000 (after taking into account any amounts previously paid pursuant to this clause (iii) during the continuation of the applicable Application Event), to (I) the Bank Product Providers based upon amounts then certified by each applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Provider on account of Bank Product Obligations (but not in excess of the Bank Product Reserve established for the Bank Product Obligations of such Bank Product Provider), and (II) 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)(ii), beginning with tier (A) hereof),

(K) *eleventh*, to pay any other Obligations other than Obligations owed to Defaulting Lenders (including being paid, ratably, to the Bank Product Providers on account of all amounts then due and payable in respect of Bank Product Obligations, 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)(ii), beginning with tier (A) hereof),

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

(M) *thirteenth*, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) 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).

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

(v) For purposes of Section 2.4(b)(ii), "paid in full" means payment of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vi) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in 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 2.4 shall control and govern.

(c) **Mandatory Prepayments.** Within three (3) Business Days after the date of the receipt by Borrower or any of its Subsidiaries of the proceeds of any voluntary or involuntary sale or disposition (including casualty losses but excluding sales or dispositions which qualify as Permitted Dispositions) by Borrower or any of its Subsidiaries of property or assets constituting Collateral, Borrower shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such sales or dispositions; provided, however, that so long as no Event of Default has occurred and is continuing, such Net Cash Proceeds may be reinvested in the business of Borrower and its Subsidiaries within 365 days of receipt thereof, provided that to the extent such Net Cash Proceeds are not reinvested within 365 days, prepayment of the Obligations shall be required as provided above. Immediately after giving effect to any such prepayment, Agent shall recalculate the Borrowing Base to reflect that such sale or disposition has occurred.

Nothing contained in this Section 2.4(c) shall permit Borrower or any of its Subsidiaries to sell or otherwise dispose of any Collateral other than in accordance with Section 6.4.

(d) **Application of Payments.** Each prepayment pursuant to Section 2.4(c) above shall (A) so long as no Application Event shall have occurred and be continuing, be applied, *first*, to the outstanding principal amount of the Advances (without a corresponding permanent reduction in the Maximum Revolver Amount), until paid in full, and *second*, if an Event of Default has occurred and is continuing, to cash collateralize the Letters of Credit in an amount equal to 105% of the then extant Letter of Credit Usage (without a corresponding permanent reduction in the Maximum Revolver Amount), and (B) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(ii).

2.5. Overadvances.

If, at any time or for any reason, the amount of Obligations owed by Borrower to the Lender Group pursuant to Section 2.1 or Section 2.12 is greater than any of the limitations set forth in Section 2.1 or Section 2.12, as applicable (an "Overadvance"), Borrower immediately shall pay to Agent, in immediately available funds, the amount of such excess, which amount shall be used by Agent to reduce the Obligations in accordance with the priorities set forth in Section 2.4(b). Notwithstanding the foregoing, the provisions of the prior sentence shall not apply to optional Overadvances under Section 2.3(d). Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses) in Dollars in full on the Latest Maturity Date or, if earlier, on the date on which the Obligations are declared due and payable pursuant to the terms of this Agreement.

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 and except for Bank Product Obligations) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof as follows:

(i) if the relevant Obligation is a SOFR Loan, at a per annum rate equal to the Term SOFR plus the SOFR Margin, and

(ii) otherwise, at a per annum rate equal to the Base Rate plus the Base Rate Margin.

(b) **Letter of Credit Fee.** Borrower shall pay Agent (for the ratable benefit of the Lenders with a Revolver Commitment, subject to any agreements between Agent and individual Lenders), a Letter of Credit fee (in addition to the charges, commissions, fees, and costs set forth in Section 2.12(e)) which shall accrue at a rate equal to the L/C Margin times the Daily Balance of the undrawn amount of all outstanding Letters of Credit.

(c) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default (and at the written election of the Supermajority Lenders),

(i) all Obligations (except for undrawn Letters of Credit and except for Bank Product Obligations) that have been charged to the Loan Account pursuant to the terms hereof

shall bear interest on the Daily Balance thereof at a per annum rate equal to 2 percentage points above the per annum rate otherwise applicable hereunder, and

(ii) the Letter of Credit fee provided for in Section 2.6(b) shall be increased to 2 percentage points above the per annum rate otherwise applicable hereunder.

(d) **Payment.** Except to the extent provided to the contrary in Section 2.11, Section 2.12(k) or Section 2.13(a), (i) all interest and all other fees payable hereunder or under any of the other Loan Documents (other than Letter of Credit Fees) shall be due and payable, in arrears, on the first day of each month, (ii) all Letter of Credit Fees payable hereunder, and all fronting fees and all commissions, other fees, charges and expenses provided for in Section 2.12(k) shall be due and payable, in arrears, on the first Business Day of each month, and (iii) all costs and expenses payable hereunder or under any of the other Loan Documents, and all other Lender Group Expenses shall be due and payable on (x) with respect to Lender Group Expenses outstanding as of the Closing Date, the Closing Date, and (y) otherwise, the earlier of (A) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred, or (B) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)). Borrower hereby authorizes Agent, from time to time without prior notice to Borrower, to charge to the Loan Account (A) on the first day of each month, all interest accrued during the prior month on the Advances 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 2.11(a) or (c), (D) on the first day of each month, the Unused Line Fee accrued during the prior month pursuant to Section 2.11(b), (E) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (F) on the Closing Date and thereafter as and when incurred or accrued, all other Lender Group Expenses, and (G) as and when due and payable all other payment obligations payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products). All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement) charged to the Loan Account shall thereupon constitute Advances hereunder, shall constitute Obligations hereunder, and shall initially accrue interest at the rate then applicable to Advances that are Base Rate Loans (unless and until converted into SOFR Loans in accordance with the terms of this Agreement).

(e) **Computation.** All interest and fees (other than with respect to Base Rate Loans) chargeable under the Loan Documents shall be computed on the basis of a 360 day year for the actual number of days elapsed. Interest with respect to Base Rate Loans hereunder shall be calculated on the actual number of days elapsed over a year of 365 or 366 days, as applicable. 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. Borrower 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, however, that, anything contained herein to the contrary notwithstanding, if said 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, Borrower is and shall be liable only for the payment of such maximum as allowed by law, and payment received from Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

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

2.7. Cash Management.

(a) Borrower shall and shall cause the Loan Parties to (i) establish and maintain cash management services of a type and on terms reasonably satisfactory to Agent at Wells Fargo or one or more of the other banks set forth on Schedule 2.7(a) (each a "Cash Management Bank"), and shall take reasonable steps to ensure that all of its and the Loan Parties' Account Debtors forward payment of the amounts owed by them directly to a Collection Account at such Cash Management Bank that is not an Excluded Account (a "Cash Management Account") (by wire transfer to the applicable Cash Management Bank or to a lockbox maintained by the applicable Cash Management Bank for deposit into such Collection Account), and (ii) deposit or cause to be deposited promptly, and in any event no later than the first Business Day after the date of receipt thereof, all of their Collections (including those sent directly by their Account Debtors to Borrower or a Loan Party) and proceeds of Collateral into a Cash Management Account.

(b) Borrower shall and shall cause each of the Loan Parties to establish and maintain Cash Management Agreements with Agent and the applicable Cash Management Bank, in form and substance reasonably acceptable to Agent. Each such Cash Management Agreement shall provide, among other things, that (i) the Cash Management Bank will comply with any instructions originated by Agent directing the disposition of the funds in each applicable Cash Management Account without further consent by Borrower (or any Loan Party, as applicable), (ii) the Cash Management Bank waives, subordinates or agrees not to exercise any rights of setoff or recoupment or any other claim against each applicable Cash Management Account other than for payment of its service fees and other charges directly related to the administration of such Cash Management Account and for returned checks or other items of payment, and (iii) the Cash Management Bank will forward by daily sweep all amounts in each applicable Cash Management Account to the Agent's Account.

(c) So long as no Event of Default has occurred and is continuing, Borrower may amend Schedule 2.7(a) to add or replace a Cash Management Bank or Cash Management Account and shall upon such addition or replacement provide to Agent an amended Schedule 2.7(a); provided, however that (i) such prospective Cash Management Bank shall be reasonably

satisfactory to Agent, and (ii) as promptly as practicable and in any event within 45 days (or such longer period as may be acceptable to Agent) after the opening of such Cash Management Account, Borrower (or such Loan Party, as applicable) and such prospective Cash Management Bank shall have executed and delivered to Agent a Cash Management Agreement. Borrower (or any Loan Party, as applicable) shall close any of its Cash Management Accounts (and establish replacement Cash Management Accounts in accordance with the foregoing sentence) promptly as practicable and in any event within 45 days (or such longer period as may be acceptable to Agent) after notice from Agent that such Cash Management Bank is in material breach of its obligations under its Cash Management Agreement with Agent.

(d) Other than with respect to Excluded Accounts, Borrower shall not, and shall not permit the Loan Parties to, make, acquire or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts unless Borrower or such Loan Party, as applicable, and the applicable bank or securities intermediary have entered into Cash Management Agreements governing such Permitted Investments in order to perfect (or further establish) Agent's Liens in such Permitted Investments.

2.8. 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 the 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 Borrower 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 the Agent's Account on a Business Day on or before 4:30 p.m. If any payment item is received into the Agent's Account on a non-Business Day or after 4:30 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.

2.9. Designated Account.

Agent is authorized to make the Advances, and Issuing Lender 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). Borrower agrees to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Advances requested by Borrower and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrower, any Advance, Protective Advance, or Swing Loan requested by Borrower and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.10. Maintenance of Loan Account; Statements of Obligations.

Agent shall maintain an account on its books in the name of Borrower (the "Loan Account") on which Borrower will be charged with all Advances (including Protective Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrower or for Borrower's account, the Letters of Credit issued or arranged by Issuing Lender for Borrower's account, and with all other payment Obligations hereunder or under the other Loan Documents (except for Bank

Product Obligations), including, accrued interest, fees and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrower or for Borrower's account, including all amounts received in the Agent's Account from any Cash Management Banks. Agent shall make available to Borrower monthly statements regarding the Loan Account, including the principal amount of the Advances, 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 Borrower and the Lender Group unless, within 30 days after Agent first makes such a statement available to Borrower, Borrower shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.11. Fees.

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

(b) **Unused Line Fee.** Borrower shall pay to Agent, for the ratable account of the Revolving Lenders, an unused line fee (the "Unused Line Fee") in an amount equal to 0.25% 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.** Subject to any limitations set forth in Section 5.5, Borrower shall pay to Agent, field examination fees and charges, as and when incurred or chargeable, as follows: (i) a fee of \$1,000 per day, per field examiner, *plus* reasonable and documented out-of-pocket expenses (including travel, meals, and lodging) for each field examination of Borrower performed by or on behalf of Agent, and (ii) the reasonable and documented fees, charges or expenses paid or incurred by Agent if it elects to employ the services of one or more third Persons to perform field examinations of Borrower, appraise the Collateral, or any portion thereof, or to assess Borrower's business valuation.

2.12. Letters of Credit.

(a) Subject to the terms and conditions of this Agreement, upon the request of Borrower made in accordance herewith, and prior to the Latest Maturity Date, Issuing Lender agrees issue L/Cs for the account of Borrower or to purchase participations or execute indemnities or reimbursement obligations (each such undertaking, an "L/C Undertaking") with respect to letters of credit issued by an Underlying Issuer (as of the Restatement Effective Date, the prospective Underlying Issuer is to be Wells Fargo) for the account of Borrower. By submitting a request to Issuing Lender for the issuance of a Letter of Credit, Borrower shall be deemed to have requested that (x) Issuing Lender issue the requested Letter of Credit or (y) in the case in which WFCF is the Issuing Lender, that an Underlying Issuer issue the requested Letter of Credit (and, in such case, to have requested WFCF to issue a L/C Undertaking with respect to such 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, unless otherwise consented to in writing by Issuing Lender, and shall be made in writing by an Authorized Person, (ii) delivered to Agent and Issuing Lender via telefacsimile or other electronic method of transmission reasonably acceptable to Agent and Issuing Lender and reasonably in advance of the requested date of issuance, amendment, renewal, or extension, and (iii) subject to Issuing Lender's authentication procedures with results satisfactory to Issuing Lender. Each such request shall be in form and substance reasonably satisfactory to Issuing Lender 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 Lender or Underlying Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Lender or Underlying Issuer generally requests for Letters of Credit in similar circumstances. Issuing Lender's records of the content of any such request will be conclusive absent manifest error. Anything contained herein to the contrary notwithstanding, Issuing Lender may, but shall not be obligated to, issue a Letter of Credit that supports the obligations of Borrower or one of their Subsidiaries in respect of (x) a lease of real property to the extent that the face amount of such Letter of Credit exceeds the highest rent (including all rent-like charges) payable under such lease for a period of one year, or (y) an employment contract to the extent that the face amount of such Letter of Credit exceeds the highest compensation payable under such contract for a period of one year.

(b) Issuing Lender 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 Advances (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 Advances (including 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, the Issuing Lender shall not be required to issue or arrange for such Letter of Credit or any applicable L/C Undertaking to the extent (i) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit or any applicable L/C Undertaking may not be reallocated pursuant to Section 2.3(c)(iv), or (ii) the Issuing Lender has not otherwise entered into arrangements reasonably satisfactory to it and Borrower to eliminate the Issuing Lender's risk with respect to the participation in such Letter of Credit or any applicable L/C Undertaking of the Defaulting Lender, which arrangements may include Borrower cash collateralizing such Defaulting Lender's Letter of Credit Exposure in accordance with Section 2.3(c)(iv). Additionally, Issuing Lender shall have no obligation to issue a Letter of Credit or a

L/C Undertaking in respect of 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 Lender from issuing such Letter of Credit or a L/C Undertaking or Underlying Issuer from issuing such Letter of Credit, or any law applicable to Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Lender shall prohibit or request that the Issuing Lender or Underlying Issuer refrain from the issuance of letters of credit generally or such Letter of Credit or L/C Undertaking in particular, (B) the issuance of such Letter of Credit would violate one or more policies of Issuing Lender applicable to letters of credit generally, or (C) if amounts demanded to be paid under any Letter of Credit will or may not be in Dollars.

(d) Any Issuing Lender (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 Lender issues any Letter of Credit. In addition, each Issuing Lender (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 or L/C Undertakings issued by such Issuing Lender during the prior calendar week. Each Letter of Credit shall be in form and substance reasonably acceptable to Issuing Lender and, if applicable, Underlying Issuer, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender makes a payment under a Letter of Credit or L/C Undertakings, Borrower shall pay to Agent an amount equal to the applicable L/C Disbursement on the Business Day such L/C Disbursement is made and, in the absence of such payment, the amount of the L/C Disbursement immediately and automatically shall be deemed to be an Advance 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 Advances that are Base Rate Loans. If a L/C Disbursement is deemed to be an Advance hereunder, Borrower's obligation to pay the amount of such L/C Disbursement to Issuing Lender shall be automatically converted into an obligation to pay the resulting Advance. Promptly following receipt by Agent of any payment from Borrower pursuant to this paragraph, Agent shall distribute such payment to Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.12(e) to reimburse Issuing Lender, then to such Lenders and Issuing Lender as their interests may appear.

(e) Promptly following receipt of a notice of a L/C Disbursement pursuant to Section 2.12(d), each Lender agrees to fund its Pro Rata Share of any Advance deemed made pursuant to Section 2.12(d) on the same terms and conditions as if Borrower has requested the amount thereof as an Advance and Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Letter of Credit or L/C Undertaking (or an amendment, renewal, or extension of a Letter of Credit or L/C Undertaking) and without any further action on the part of Issuing Lender or the Lenders, Issuing Lender shall be deemed to have granted to each Lender, and each Lender shall be deemed to have purchased, a participation in each Letter of Credit or L/C Undertaking issued by Issuing Lender, in an amount equal to its Pro Rata Share of such Letter of Credit or L/C Undertaking, and each such Lender agrees to pay to Agent, for the account of Issuing Lender, such Lender's Pro Rata Share of any L/C Disbursement made by Issuing Lender under the applicable Letter of Credit or L/C Undertaking. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to Agent, for the account of Issuing Lender, such Lender's Pro Rata Share of each L/C Disbursement made by Issuing Lender and not reimbursed by Borrower on the date due as

provided in Section 2.12(d), or of any reimbursement payment that is required to be refunded (or that Agent or Issuing Lender elects, based upon the advice of counsel, to refund) to Borrower for any reason. Each Lender acknowledges and agrees that its obligation to deliver to Agent, for the account of Issuing Lender, an amount equal to its respective Pro Rata Share of each L/C Disbursement pursuant to this Section 2.12(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 Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a L/C Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including Issuing Lender and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including Issuing Lender, 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 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 this Agreement, any Letter of Credit, any Issuer Document, or any Drawing Document referred to in or related to any Letter of Credit, or any action or proceeding arising out of any of the foregoing (whether administrative, judicial or in connection with arbitration); in each case, including that resulting from the Letter of Credit Related Person's own negligence; provided, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification 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. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(g) The liability of Issuing Lender (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit (or pre-advice) or L/C Undertaking, regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Borrower that are caused directly by Issuing Lender'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. Borrower's aggregate remedies against Issuing Lender 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 Borrower to Issuing Lender in respect of the honored presentation in connection with such Letter of Credit under Section 2.12(d), plus interest at the rate then applicable to Advances of Base Rate Loans hereunder. Borrower shall take action to avoid and mitigate the amount of any damages claimed against

Issuing Lender or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by Borrower 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 Borrower 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 Borrower taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Issuing Lender and/or or Underlying Issuer to effect a cure.

(h) Borrower is responsible for the final text of the Letter of Credit as issued by Issuing Lender or Underlying Issuer, irrespective of any assistance Issuing Lender or Underlying Issuer may provide such as drafting or recommending text or by Issuing Lender's or Underlying Issuer's use or refusal to use text submitted by Borrower. Borrower understands 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 Lender or Underlying Issuer, and Borrower hereby consents to such revisions and changes not materially different from the application executed in connection therewith. Borrower is solely responsible for the suitability of the Letter of Credit for Borrower's purposes. If Borrower requests Issuing Lender or Underlying Issuer 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 Lender or Underlying Issuer; (ii) Borrower 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 Lender or Underlying Issuer and Borrower. Borrower will examine the copy of the Letter of Credit and any other documents sent by Issuing Lender in connection therewith and shall promptly notify Issuing Lender and Underlying Issuer (not later than three (3) Business Days following Borrower's receipt of documents from Issuing Lender) of any non-compliance with Borrower's instructions and of any discrepancy in any document under any presentment or other irregularity. Borrower understands and agrees that neither Issuing Lender or Underlying Issuer is 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 Lender and Underlying Issuer, each in its sole and absolute discretion, may give notice of nonrenewal of such Letter of Credit and, if Borrower does not at any time want the then current expiration date of such Letter of Credit to be extended, Borrower will so notify Agent and Issuing Lender and Underlying Issuer at least 30 calendar days before Issuing Lender or Underlying Issuer 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) Borrower's reimbursement and payment obligations under this Section 2.12 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, any L/C Undertaking, 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 Lender or Underlying Issuer or any of its branches or Affiliates being the beneficiary of any Letter of Credit;

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

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

(vi) Issuing Lender 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 Lender'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 2.12(i), constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, 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 Lender, Underlying Issuer, 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 2.12(g) above, the foregoing shall not release Issuing Lender or Underlying Issuer from such liability to Borrower as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against Issuing Lender or Underlying Issuer following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of Borrower to Issuing Lender arising under, or in connection with, this Section 2.12 or any Letter of Credit or L/C Undertaking.

(j) Without limiting any other provision of this Agreement, Issuing Lender, Underlying Issuer and each other Letter of Credit Related Person (if applicable) shall not be responsible to Borrower for, and Issuing Lender's and Underlying Issuer's rights and remedies against Borrower and the obligation of Borrower to reimburse Issuing Lender and Underlying Issuer for each drawing under each Letter of Credit and L/C Undertaking 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 Lender's or Underlying Issuer'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 Lender and/or Underlying Issuer 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 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 Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

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

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

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where Issuing Lender or Underlying Issuer 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 Lender or Underlying Issuer, as applicable, if subsequently Issuing Lender or Underlying Issuer, as applicable, 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) (xiii) honor of a presentation that is subsequently determined by Issuing Lender or Underlying Issuer, as applicable, to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

(k) Borrower shall promptly pay upon receipt by Borrower of written demand to Agent for the account of Issuing Lender 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 2.12(k)): (i) a fronting fee which shall be imposed by Issuing Lender equal to 0.25% per annum times the average amount of the Letter of Credit Usage during the immediately preceding quarter (or if an Event of Default has occurred, month) (or portion thereof), plus (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all reasonable and documented out-of-pocket expenses incurred by, Issuing Lender or Underlying Issuer 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 Lender, Underlying Issuer 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 or L/C Undertaking 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 Lender, Underlying Issuer or any other member of the Lender Group any other condition regarding any Letter of Credit, L/C Undertaking, Loans, or obligations to make Loans hereunder,

and the result of the foregoing is to increase, directly or indirectly, the cost to Issuing Lender, Underlying Issuer or any other member of the Lender Group of issuing, making, participating in, or maintaining any Letter of Credit or L/C Undertaking 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 Borrower, and Borrower shall pay within 30 days after written demand therefor, such amounts as Agent may specify to be necessary to compensate Issuing Lender or any other member of the Lender Group for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, that (A) Borrower shall not be required to provide any compensation pursuant to this Section 2.12(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 Borrower, 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 2.12(l), as set forth in a certificate setting forth the calculation

thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(m) Each standby Letter of Credit shall expire not later than the date that is 12 months after the date of the issuance of such Letter of Credit; provided, that any standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to one year in duration; provided further, that with respect to any Letter of Credit which extends beyond the Latest Maturity Date, Letter of Credit Collateralization shall be provided therefor on or before the date that is five Business Days prior to the Latest 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 Latest 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 Borrower receives written notice from Agent or the Required Lenders (or, if the maturity of the Obligations has been accelerated, 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 2.12(n) upon such demand, Borrower shall provide Letter of Credit Collateralization with respect to the then existing Letter of Credit Usage. If Borrower fails to provide Letter of Credit Collateralization as required by this Section 2.12(n), the Lenders may (and, upon direction of Agent, shall) advance, as Advances 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 Lender and Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

(p) Issuing Lender shall be deemed to have acted with due diligence and reasonable care if Issuing Lender'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 2.12 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 2.12 shall control and govern.

(r) The provisions of this Section 2.12 shall survive the termination of this Agreement and the repayment in full of the Obligations with respect to any Letters of Credit or L/C Undertakings that remain outstanding.

(s) At Borrower's costs and expense, Borrower shall execute and deliver to Issuing Lender such additional certificates, instruments and/or documents and take such additional action as may be reasonably requested by Issuing Lender to enable Issuing Lender to issue any Letter of Credit pursuant to this Agreement and related Issuer Document, to protect, exercise

and/or enforce Issuing Lenders' rights and interests under this Agreement or to give effect to the terms and provisions of this Agreement or any Issuer Document. Borrower irrevocably appoints Issuing Lender as its attorney-in-fact and authorizes Issuing Lender, without notice to Borrower, 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 Borrower 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.

2.13. SOFR Option.

(a) **Interest and Interest Payment Dates.** In lieu of having interest charged at the rate based upon the Base Rate, Borrower shall have the option, subject to Section 2.13(b) below (the "SOFR Option") to have interest on all or a portion of the Advances be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a SOFR Loan, or upon continuation of a SOFR Loan as a SOFR Loan) at a rate of interest based upon the SOFR. Interest on SOFR Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto (provided, however, that, subject to the following clauses (ii) and (iii), in the case of any Interest Period greater than three (3) months in duration, interest shall be payable at 3 month intervals after the commencement of the applicable Interest Period and on the last day of such Interest Period), (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrower has properly exercised the SOFR Option with respect thereto, the interest rate applicable to such SOFR Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans of the same type hereunder. At any time that an Event of Default has occurred and is continuing, Borrower no longer shall have the option to request that Advances bear interest at a rate based upon Term SOFR and Borrower shall not have the right to renew or extend any then outstanding SOFR Loans at the end of the Interest Period applicable thereto unless, in each case, the Required Lenders shall have provided their written consent thereto.

(b) SOFR Election.

(i) Borrower may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect to exercise the SOFR Option by notifying Agent prior to 2:00 p.m. at least 3 U.S. Government Securities Business Days prior to the commencement of the proposed Interest Period (the "SOFR Deadline"). Notice of Borrower's election of the SOFR Option for a permitted portion of the Advances and an Interest Period pursuant to this Section shall be made by delivery to Agent of a SOFR Notice received by Agent before the SOFR Deadline. Promptly upon its receipt of each such SOFR Notice, Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each SOFR Notice shall be irrevocable and binding on Borrower. In connection with each SOFR Loan, Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment or required assignment of any principal of any SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default),

(B) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any SOFR Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Agent or a Lender delivered to Borrower setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.13 shall be conclusive absent manifest error. Borrower shall pay such amount to Agent or the Lender, as applicable, within 30 days of the date of its receipt of such certificate.

(iii) Borrower shall have not more than 5 SOFR Loans in effect at any given time. Borrower only may exercise the SOFR Option for SOFR Loans of at least \$500,000 and integral multiples of \$500,000.

(c) **Conversion.** Borrower may convert SOFR Loans to Base Rate Loans or prepay SOFR Loans at any time; provided, however, that in the event that SOFR Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any automatic prepayment through the required application by Agent of any payments or proceeds of Collateral in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.13 (b)(ii) above.

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

(i) Term SOFR may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs (other than Taxes which shall be governed by Section 16), in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, or pursuant to any Change in Law or change in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at Term SOFR. In any such event, the affected Lender shall give Borrower 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, Borrower may, by notice to such affected Lender (A) require such Lender to furnish to Borrower a statement setting forth in reasonable detail the basis for adjusting such Term SOFR and the method for determining the amount of such adjustment, or (B) repay the SOFR Loans or Base Rate Loans determined with reference to Term SOFR, in each case, of such Lender with respect to which such adjustment is made (together with any amounts due under Section 2.13(b)(ii)).

(ii) Subject to the provisions set forth in Section 2.13(d)(iii) below, in the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain SOFR Loans (or Base Rate Loans determined with reference to Term SOFR) or to continue such funding or maintaining, or to determine or charge interest rates at the Term SOFR Reference Rate, Term SOFR or SOFR, such Lender shall give notice of such changed circumstances to Agent and Borrower and Agent promptly shall transmit the notice to each other Lender and (y)(i) in the case of any SOFR Loans of such Lender that are outstanding, such SOFR Loans of such Lender will be deemed to have been converted to Base Rate Loans on the last day

of the Interest Period of such SOFR Loans, if such Lender may lawfully continue to maintain such SOFR Loans, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans, and thereafter interest upon the SOFR Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans (and if applicable, without reference to the Term SOFR component thereof) and (ii) in the case of any such Base Rate Loans of such Lender that are outstanding and that are determined with reference to Term SOFR, interest upon the Base Rate Loans of such Lender after the date specified in such Lender's notice shall accrue interest at the rate then applicable to Base Rate Loans without reference to the Term SOFR component thereof and (z) Borrower shall not be entitled to elect the SOFR Option and Base Rate Loans shall not be determined with reference to the Term SOFR component thereof, in each case, until such Lender determines that it would no longer be unlawful or impractical to do so.

(iii) **Benchmark Replacement Setting.**

(A) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, Agent and Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Agent has posted such proposed amendment to all affected Lenders and Borrower so long as Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.13(d)(iii) will occur prior to the applicable Benchmark Transition Start Date.

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

(C) **Notices; Standards for Decisions and Determinations.** Agent will promptly notify Borrower and the Lenders of (1) the implementation of any Benchmark Replacement and (2) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Agent will notify Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.13(d)(iii)(D) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.13(d)(iii), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.13(d)(iii).

(D) **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (1) if the then-current

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

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

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

2.14. Capital Requirements.

If, after the date hereof, Issuing Lender 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 Lender 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 Lender's, such Lender's, or such holding companies' capital or liquidity as a consequence of Issuing Lender's or such Lender's commitments, Loans, participations or other obligations hereunder to a level below that which Issuing Lender, such Lender, or such holding companies could have achieved but for such Change in Law or compliance (taking into consideration Issuing Lender'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 Lender or such Lender to be material, then Issuing Lender or such Lender may notify Borrower and Agent thereof. Following receipt of such notice, Borrower agrees to pay Issuing Lender or such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 90 days after presentation by Issuing Lender or such Lender of a statement in the amount

and setting forth in reasonable detail Issuing Lender'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 Lender or such Lender may use any reasonable averaging and attribution methods.

2.15. Maximum Revolver Amount Increases.

At any time and from time to time during the period commencing on the Closing Date and ending on the Latest Maturity Date, Borrower may elect to increase the Maximum Revolver Amount (a "Maximum Revolver Amount Increase"); provided that (a) lenders acceptable to the Agent and Borrower shall have committed in writing to provide the Maximum Revolver Amount Increase being requested; (b) **[Intentionally Omitted]**; (c) no Default or Event of Default shall have occurred and be continuing; *provided*, however, solely in the event the initial proceeds of such Maximum Revolver Amount Increase are intended to and shall be used to finance a Limited Condition Acquisition occurring concurrently with such Maximum Revolver Increase, such condition shall be that (x) no Default or Event of Default shall exist at the time at which the agreement relating to such acquisition is executed and delivered by the parties thereto and (y) no Event of Default under Section 7.1, 7.4 or 7.5 (the "LCA Default Conditions"); and (d) Borrower shall elect Maximum Revolver Amount Increases in increments of no less than \$5,000,000; provided that the aggregate of all Maximum Revolver Amount Increases shall not exceed \$50,000,000. Subject to the preceding sentence, any Maximum Revolver Amount Increase may be provided by any existing Lender or by any other bank or other financial institution (any such other bank or other financial institution being called an "Additional Lender"). Commitments in respect of Maximum Revolver Amount Increases shall become Commitments (or in the case of a Maximum Revolver Amount Increase to be provided by an existing Lender, an increase in such Lender's Revolver Commitment) under this Agreement pursuant to an amendment (an "Incremental Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender agreeing to provide such Commitment, if any, each Additional Lender, if any, and the Agent. The Incremental Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Agent to effect the provisions of this Section. The effectiveness of any Incremental Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 3.2 (it being understood that all references to "extending credit" or similar language in such Section 3.2 shall be deemed to refer to the effective date of such Incremental Amendment); *provided* that, notwithstanding anything to the contrary, solely in the event the initial proceeds of such Maximum Revolver Amount Increase are intended to and shall be used to finance a Limited Condition Acquisition occurring concurrently with such Maximum Revolver Increase (i) the condition in Section 3.2(b) shall be replaced with the LCA Default Conditions and (ii) the conditions in Section 3.2(a) and Section 3.2(c) shall be limited to the Specified Representations and such representations and warranties in the purchase or acquisition agreement relating to such Acquisition which are material to the interests of the Lenders (but only to the extent that Borrower (or any of its Subsidiaries) has the right not to consummate the Limited Condition Acquisition or the right to terminate (or cause the termination of) its obligations under the relevant acquisition agreement as a result of a breach of such representations). The Borrower will use the proceeds of the Maximum Revolver Amount Increases for any purpose not prohibited by this Agreement. In connection with any Maximum Revolver Amount Increase, if any Loan Party or any of its Subsidiaries owns or will acquire any

Margin Stock, Borrower shall deliver to Agent an updated Form U-1 (with sufficient additional originals thereof for each Lender), duly executed and delivered by the Borrower, 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. Upon each Maximum Revolver Amount Increase pursuant to this Section, each Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing a portion of the Maximum Revolver Amount Increase (each a "Revolver Commitment Increase Lender") in respect of such increase, and each such Revolver Commitment Increase Lender will automatically and without further act be deemed to have assumed, a portion of such Lender's participations hereunder in outstanding Letters of Credit and Swing Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (i) participations hereunder in Letters of Credit and (ii) participations hereunder in Swing Loans held by each Lender (including each such Revolver Commitment Increase Lender) will equal the percentage of the aggregate Commitments of all Lenders represented by such Lender's Commitment and if, on the date of such increase, there are any Advances outstanding, such Advances shall on or prior to the effectiveness of such Maximum Revolver Amount Increase be prepaid from the proceeds of additional Advances made hereunder (reflecting such increase in Commitments), which prepayment shall be accompanied by accrued interest on the Advances being prepaid and any costs incurred by any Lender in accordance with Section 2.13. This Section 2.15 shall supersede any provisions in Section 15.12(b) or 14.1 to the contrary.

Agent will use reasonable efforts to work with the Borrower in attempting to syndicate any proposed Maximum Revolver Amount Increase; provided, however, that the Agent shall not be under any obligation to provide any portion of any Maximum Revolver Amount Increase; nor shall the Agent have any commitment to identify any lenders which are willing to provide all or any portion of any Incremental Facility. If a Maximum Revolver Amount Increase occurs, the Agent and Lenders will, in good faith, consider the Borrower's request to increase the Inventory Sublimit.

2.16. Extensions of Revolver Commitments.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "Extension Offer") made from time to time by Borrower to all Lenders with Revolver Commitments with a like maturity date, in each case on a pro rata basis (based on the aggregate outstanding principal amount of such Revolver Commitments with a like maturity date) and on the same terms to each such Lender, Borrower is hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date of each such Lender's Revolver Commitments and otherwise modify the terms of Revolver Commitments pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate margin, interest rate floor, all-in yield pricing or fees payable in respect of Revolver Commitments (and related outstandings)) (each, an "Extension," and each portion of Revolver Commitments in each case as so extended, as well as the original Revolver Commitments (in each case not so extended), being a "tranche"; any Extended Revolver Commitments shall constitute a separate tranche of Revolver Commitments from the tranche of Revolver Commitments from which they were converted), in each case, so long as each of the following terms is satisfied: (i) no Event of Default shall have occurred and be continuing at the time the offering document in respect of an Extension Offer is delivered to the

Lenders, (ii) except as to interest rate margin, interest rate floor, all-in yield pricing, fees, AHYDO Payments, optional redemption or prepayment terms, final maturity, and after the final maturity date of the other existing Revolver Commitments, any other covenants and provisions (which shall be determined by Borrower and the Extending Revolver Lenders and set forth in the relevant Extension Offer), the Revolver Commitment of any Lender (an "Extending Revolver Lender") extended pursuant to an Extension (an "Extended Revolver Commitment"), and the related outstandings, shall be a Revolver Commitment (or related outstandings, as the case may be) with such other terms substantially identical to, or not more favorable to the Extending Revolver Lenders than those applicable to the Revolver Commitments not subject to such Extension Offer (and related outstandings); provided, that (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Extended Revolver Commitments (and related outstandings), (B) repayments required upon the maturity date of the non-extending Revolver Commitments, and (C) repayment made in connection with a permanent repayment and termination of commitments) of Advances with respect to Extended Revolver Commitments after the applicable Extension date shall be made on a pro rata basis with all other Revolver Commitments, (2) all Swing Loans and Letters of Credit shall be participated on a pro rata basis by all Lenders with Revolver Commitments in accordance with their percentage of the Revolver Commitments subject to the express terms herein, (3) the permanent repayment of Advances with respect to, and termination of, Extended Revolver Commitments after the applicable Extension date shall be made on a pro rata basis with all other Revolver Commitments, except that Borrower shall be permitted to permanently repay and terminate commitments of any tranche on a better than a pro rata basis as compared to any other tranche with a later maturity date than such tranche, (4) assignments and participations of Extended Revolver Commitments and extended Advances shall be governed by the same assignment and participation provisions applicable to Revolver Commitments and Advances, and (5) at no time shall there be Revolver Commitments hereunder (including Extended Revolver Commitments and any original Revolver Commitments) which have more than three different maturity dates, (iii) to the extent that the interest rate margin, interest rate floor, all-in yield pricing or fees are increased for the benefit of any Extending Revolver Lender that is payable prior to the payment in full of the Obligations of Lenders that are not Extending Revolver Lenders under such Extension Offer, such non-extending Lenders have the right to receive the aggregate value of such increase from and after the date that such interest rate margin, interest rate floor, all-in yield pricing or fees (as applicable) accrues in favor of or is payable to any such Extending Revolver Lenders, (iv) if the aggregate principal amount of Revolver Commitments in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Revolver Commitments offered to be extended by Borrower pursuant to such Extension Offer, then the Revolver Commitments of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings or commitments of record) with respect to which such Lenders have accepted such Extension Offer, (v) Borrower shall have delivered to Agent such legal opinions, certificates, resolutions and other documents as Agent shall reasonably request with respect to the transactions contemplated by this Section 2.16, (vi) all documentation in respect of such Extension shall be consistent with the foregoing, (vii) the Revolver Commitments extended pursuant to any Extension Offer shall be in a minimum amount of \$10,000,000 and increments of \$1,000,000 in excess thereof, and (viii) any Extension made pursuant to any Extension Offer must be consummated within 45 days of such Extension Offer.

(b) With respect to all Extensions consummated by Borrower pursuant to this Section 2.16, such Extension shall not constitute voluntary or mandatory payments or prepayments for purposes of this Agreement. Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.16 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.16.

(c) No consent of any Lender or Agent shall be required to effectuate any Extension, other than (i) the consent of each Lender agreeing to such Extension with respect to its Revolver Commitments (or a portion thereof), and (ii) with respect to any Extension of the Revolver Commitments, the consent of the Issuing Lender or Swing Lender to the extent the Letter of Credit facility and/or Swing Loan facility is to be extended, which consent shall not be unreasonably withheld, delayed or conditioned. All Extended Revolver Commitments and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents that are secured by the Collateral on a pari passu basis with all other applicable Obligations under this Agreement and the other Loan Documents. The Lenders hereby irrevocably authorize Agent to enter into amendments to this Agreement and the other Loan Documents with the Loan Parties as may be necessary or appropriate in order to establish new tranches or sub-tranches in respect of Revolver Commitments so extended, that reflect the terms and conditions of any such Extension and such technical amendments as may be necessary or appropriate in the reasonable opinion of Agent and Borrower in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.16. All such amendments entered into with the Loan Parties by Agent hereunder shall be binding and conclusive on the Lenders. In addition, if so provided in such amendment and with the consent of Issuing Lender, participations in Letters of Credit expiring on or after the Maturity Date in respect of the Advances shall be re-allocated from Lenders holding Revolver Commitments to Lenders holding Extended Revolver Commitments in accordance with the terms of such amendment; provided, that such participation interests shall, upon receipt thereof by the relevant Lenders holding Extended Revolver Commitments, be deemed to be participation interests in respect of such Extended Revolver Commitments and the terms of such participation interests (including the fees applicable thereto) shall be adjusted accordingly. On and after the maturity date with respect to the Revolver Commitment and Advances of any Lender that has not extended its Revolver Commitments and Advances beyond such maturity date pursuant to this Section 2.16, the Letter of Credit Exposure of such Revolving Lender shall be reallocated to Revolving Lenders that have extended their Advances and Revolver Commitments beyond such maturity date pro rata in accordance with the Revolver Commitments and Advances of all Revolving Lenders that have so extended their Revolver Commitments and Advances. Notwithstanding the provisions of this Section 2.16, Agent shall have the right to resign on the Maturity Date in accordance with Section 15.9.

(d) In connection with any Extension, Borrower shall provide Agent at least ten days (or such shorter period as may be agreed by Agent) prior written notice thereof, and shall agree to such procedures (including rendering timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such

Extension), if any, as may be established by, or acceptable to, Agent, in each case acting reasonably to accomplish the purposes of this Section 2.16.

3. CONDITIONS; TERM OF AGREEMENT.

3.1. Conditions Precedent to the Initial Extension of Credit.

The obligation of each Lender to make its initial extension of credit provided for hereunder, 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 (the making of such initial extension 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 Advances 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 Borrower 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);

(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; and

(c) no injunction, writ, restraining order, or other order of any nature restricting or prohibiting, directly or indirectly, the extending of such credit shall have been issued and remain in force by any Governmental Authority against Borrower, Agent, or any Lender.

3.3. Term.

This Agreement shall continue in full force and effect for a term ending on Latest Maturity Date. The foregoing notwithstanding, the Lender Group, upon the election of the Required Lenders, shall have the right to terminate its obligations under this Agreement immediately and without notice upon the occurrence and during the continuation of an Event of Default.

3.4. Effect of Termination.

On the date of termination of this Agreement, all Obligations (including contingent reimbursement obligations of Borrower with respect to outstanding Letters of Credit and including all Bank Product Obligations) immediately shall become due and payable without notice or demand (including the requirement that Borrower provide (a) Letter of Credit Collateralization, and (b) Bank Product Collateralization). No termination of this Agreement, however, shall relieve or discharge Borrower or its Subsidiaries of their duties, Obligations, or covenants hereunder or under any other Loan Document, and the Agent's Liens in the Collateral shall remain in effect until

all Obligations have been paid in full and the Lender Group's obligations to provide additional credit hereunder have been terminated. When this Agreement has been terminated and all of the Obligations have been paid in full and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrower's sole expense, execute and deliver any termination statements, Lien releases, re-assignments of trademarks, 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, the Agent's Liens and all notices of security interests and Liens previously filed by Agent with respect to the Obligations.

3.5. Early Termination by Borrower.

Borrower has the option, at any time upon three (3) Business Days prior written notice to Agent, to terminate this Agreement and terminate the Commitments hereunder by paying to Agent, in cash, the Obligations (including (a) providing Letter of Credit Collateralization with respect to the then existing Letter of Credit Usage, and (b) providing Bank Product Collateralization with respect to the then existing Bank Products), in full. If Borrower has sent a notice of termination pursuant to the provisions of this Section, then the Commitments shall terminate and Borrower shall be obligated to repay the Obligations (including (a) providing Letter of Credit Collateralization with respect to the then existing Letter of Credit Usage, and (b) providing Bank Product Collateralization with respect to the then existing Bank Products), in full, on the date set forth as the date of termination of this Agreement in such notice; provided, that (i) a notice of termination may state that such termination is conditioned upon the effectiveness of other credit facilities or the consummation of other transactions, in which case, such notice may be revoked by Borrower (by notice to Agent on or prior to the specified effective date) if such condition is not satisfied or such transaction is not consummated, and (ii) Borrower 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, as of the date hereof, and shall be true, correct, and complete, in all material respects, as of the Closing Date and at and as of the date of the making of each Advance (or other extension of credit) requested by Borrower (and not deemed made by Agent or any Lender) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1. No Encumbrances.

Borrower and its Subsidiaries have good and marketable title to, or a valid leasehold interest in, their personal property assets and good and marketable title to, or a valid leasehold interest in, their Real Property, in each case, free and clear of Liens except for Permitted Liens.

4.2. Eligible Accounts.

As to each Account (or portion thereof) that is identified by Borrower as an Eligible Account in a borrowing base report (whether weekly or monthly) submitted to Agent, as of the date of such report, 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 Borrower's business, (b) owed to Borrower without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation (other than adjustments and discounts given in the ordinary course of Borrower's business and other defenses, disputes, offsets and counterclaims, in each case, to the extent the amount of the same is excluded from the value of Accounts represented as Eligible Accounts), and (c) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Accounts (except to the extent that the applicable eligibility criteria for such Account (or portion thereof) is subject to Agent's discretion or satisfaction).

4.3. Eligible Inventory.

As to each item of Inventory that is identified by Borrower as Eligible Inventory in a borrowing base report (other than any weekly inventory report submitted pursuant to clause (b) of Schedule 5.2) submitted to Agent, as of the date of such report, 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 set forth in the definition of Eligible Inventory (except to the extent that the applicable eligibility criteria for such Inventory (or portion thereof) is subject to Agent's discretion or satisfaction).

4.4. Equipment.

Each material item of Equipment of Borrower and its Subsidiaries is used or held for use in their business and is in good working order, ordinary wear and tear and damage by casualty excepted.

4.5. [Reserved].

4.6. Inventory Records.

Borrower keeps correct and accurate records in all material respects itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof, subject to normal adjustments and corrections in the ordinary course of business.

4.7. Jurisdiction of Organization; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims.

(a) The name of (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of Borrower and each of its Subsidiaries is set forth on Schedule 4.7(a) (as such Schedule may be updated from time to time to reflect changes permitted to be made under Section 6.5).

(b) The chief executive office of Borrower and each of its Subsidiaries is located at the address indicated on Schedule 4.7(b) (as such Schedule may be updated from time to time to reflect changes permitted to be made under Section 5.9).

(c) Borrower's and each of its Subsidiaries' tax identification numbers and organizational identification numbers, if any, are identified on Schedule 4.7(c) (as such Schedule may be updated from time to time to reflect changes permitted to be made under Section 6.5).

(d) As of the Closing Date, Borrower and its Subsidiaries do not hold any commercial tort claims, except as set forth on Schedule 4.7(d).

4.8. Due Organization and Qualification; Subsidiaries.

(a) Borrower is duly organized and existing and in good standing under the laws of the jurisdiction of its organization and qualified to do business in any state where the failure to be so qualified reasonably could be expected to result in a Material Adverse Change.

(b) As of the Closing Date, Borrower is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital Stock or any security convertible into or exchangeable for any of its capital Stock.

(c) As of the Closing Date, set forth on Schedule 4.8(c) is a complete and accurate list of Borrower's direct and indirect Subsidiaries, showing: (i) the jurisdiction of their organization, (ii) the number of shares of each class of common and preferred Stock authorized for each of such Subsidiaries, and (iii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Borrower. All of the outstanding capital Stock of each such Subsidiary has been validly issued and is fully paid and non-assessable, if applicable.

(d) As of the Closing Date, except as set forth on Schedule 4.8(c), there are no subscriptions, options, warrants, or calls relating to any shares of Borrower's Subsidiaries' capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. As of the Closing Date, neither Borrower nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of Borrower's Subsidiaries' capital Stock or any security convertible into or exchangeable for any such capital Stock.

4.9. Due Authorization; No Conflict.

(a) The execution, delivery, and performance by Borrower of this Agreement and the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of Borrower.

(b) The execution, delivery, and performance by Borrower of this Agreement and the other Loan Documents to which it is a party do not and will not (i) violate any provision of federal, state, or local law or regulation applicable to Borrower, the Governing Documents of Borrower, or any order, judgment, or decree of any court or other Governmental Authority binding on Borrower, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, the Term Loan Agreement, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any properties or assets of Borrower, other

than Permitted Liens, or (iv) require any approval of Borrower's shareholders or any approval or consent of any Person under the Term Loan Agreement, other than consents or approvals that have been obtained and that are still in force and effect.

(c) Other than the filing of financing statements and other filings or actions necessary to perfect Liens granted to Agent in the Collateral, the execution, delivery, and performance by Borrower of this Agreement and the other Loan Documents to which Borrower is a party 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 consents or approvals that have been obtained and that are still in force and effect.

(d) This Agreement and the other Loan Documents to which Borrower is a party, and all other documents contemplated hereby and thereby, when executed and delivered by Borrower will be the legally valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(e) The Agent's Liens are validly created, perfected (other than any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by Section 6.12, and subject only to the filing of financing statements), and first priority Liens, subject only to Permitted Liens.

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

(g) The execution, delivery, and performance by each Guarantor of the Loan Documents to which it is a party do not and will not (i) violate any provision of federal, state, or local law or regulation applicable to such Guarantor, the Governing Documents of such Guarantor, or any order, judgment, or decree of any court or other Governmental Authority binding on such Guarantor, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under the Term Loan Agreement, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any properties or assets of such Guarantor, other than Permitted Liens, or (iv) require any approval of such Guarantor's interestholders or any approval or consent of any Person under the Term Loan Agreement, other than consents or approvals that have been obtained and that are still in force and effect.

(h) Other than the filing of financing statements and other filings or actions necessary to perfect Liens granted to Agent in the Collateral, the execution, delivery, and performance by each Guarantor of the Loan Documents to which such Guarantor is a party 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 consents or approvals that have been obtained and that are still in force and effect.

(i) The Loan Documents to which each Guarantor is a party, and all other documents contemplated hereby and thereby, when executed and delivered by such Guarantor will be the legally valid and binding obligations of such Guarantor, enforceable against such Guarantor

in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

4.10. Litigation.

Other than those matters disclosed on Schedule 4.10, there are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened against Borrower or any of its Subsidiaries that reasonably could be expected to result in a Material Adverse Change.

4.11. Financial Statements and Condition.

All financial statements relating to Borrower and its Subsidiaries that have been delivered by Borrower to the Lender Group have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, Borrower's and its Subsidiaries' financial condition as of the date thereof and results of operations for the period then ended. There has not been a Material Adverse Change with respect to Borrower and its Subsidiaries since June 28, 2018.

4.12. Fraudulent Transfer.

(a) Each of Borrower and each of its Subsidiaries is Solvent.

(b) No transfer of property is being made by Borrower or its Subsidiaries and no obligation is being incurred by Borrower or its Subsidiaries 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 Borrower or its Subsidiaries.

4.13. Employee Benefits.

None of Borrower, any of its Subsidiaries, or any of their ERISA Affiliates maintains or contributes to any Benefit Plan, except as set forth on Schedule 4.13.

4.14. Environmental Condition.

Except as set forth on Schedule 4.14 or exceptions to any of the following that would not reasonably be expected to result in a Material Adverse Change, (a) to Borrower's knowledge, none of Borrower's or its Subsidiaries' properties or assets has ever been used by Borrower, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such use, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law; (b) to Borrower's knowledge, none of Borrower's or its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any Environmental Law as a location where Hazardous Materials have been disposed of or released; (c) neither Borrower 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 Borrower or its Subsidiaries; and (d) neither Borrower nor its Subsidiaries has received a summons, citation, notice, or directive from the United States Environmental Protection Agency

or any other federal or state governmental agency concerning any action or omission by Borrower or its Subsidiaries resulting in the releasing or disposing of Hazardous Materials into the environment.

4.15. Intellectual Property.

Borrower and its Subsidiaries own, or hold licenses in, all trademarks, trade names, copyrights, patents, patent rights, and licenses that are necessary to the conduct of its business as currently conducted, and attached hereto as Schedule 4.15 (as updated from time to time) is a true, correct, and complete listing of all material patents, patent applications, trademarks, trademark applications, copyrights, and copyright registrations as to which Borrower or one of its Subsidiaries is the owner or is an exclusive licensee; provided, however, that Borrower may amend Schedule 4.15 to add additional property so long as such amendment occurs by written notice to Agent promptly after Borrower or any Subsidiary of Borrower acquires any such property after the Closing Date.

4.16. Leases.

Except to the extent not reasonably likely to result in a Material Adverse Change, (a) 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, (b) all of such material leases are valid and subsisting and (c) no material default by Borrower or its Subsidiaries exists under any of them.

4.17. Deposit Accounts and Securities Accounts.

As of the Closing Date, set forth on Schedule 4.17 is a listing of all of Borrower's and its Domestic Subsidiaries' Deposit Accounts and Securities Accounts, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

4.18. Complete Disclosure.

All factual information (other than any financial projections, other forward-looking information, budgets, forecasts and estimates and information of a general economic or industry specific nature) (taken as a whole) furnished by or on behalf of Borrower 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, the other Loan Documents, or any transaction contemplated herein or therein is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of Borrower 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, except as permitted by Sections 4.3 and 5.14. Any Projections delivered to Agent represent Borrower's good faith estimate of its and its Subsidiaries future performance for the periods covered thereby based upon assumptions believed by Borrower to be reasonable at the time of the delivery thereof to Agent (it being recognized and understood that any such Projections are not to be viewed as facts

or a guarantee of performance and are subject to uncertainties and contingencies, many of which are beyond the control of Borrower and its Subsidiaries and no assurances can be given that any such Projections will be realized, that actual results may differ from projected results and that such differences may be material). As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.19. Indebtedness.

Set forth on Schedule 4.19 is a true and complete list of all Indebtedness of Borrower and its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding after the Closing Date, and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

4.20. Growers' Liens.

Borrower and its Subsidiaries are in compliance with all notifications and instructions received from creditors of Protected Vendors delivered pursuant to Growers' Lien Laws. Borrower has registered with the Secretary of State (or other designated individual or office) in each FSA State in which a Protected Vendor from whom Borrower purchases agricultural products is located and is entitled to receive centrally compiled lists of secured creditors published by each such State.

4.21. OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.

No Loan Party or any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender, Bank Product Provider, or other individual or entity participating in any transaction).

4.22. Margin Stock.

Neither any Loan Party nor any of its Subsidiaries 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 or, as of the Closing Date, owns any Margin Stock. No part of the proceeds of the Advances made to Borrower will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any

purpose that violates the provisions of Regulation T, U or X of the Board of Governors. Neither any Loan Party nor any of its Subsidiaries expects to acquire any Margin Stock.

4.23. Hedge Agreements.

On each date that any Hedge Agreement is executed by any Hedge Provider, Borrower and each other Loan Party satisfy all eligibility, suitability and other requirements under the Commodity Exchange Act (7 U.S.C. § 1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

4.24. Patriot Act.

To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended) (the "Patriot Act").

5. AFFIRMATIVE COVENANTS.

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, Borrower shall and shall cause each of its Subsidiaries to do all of the following:

5.1. Books and Records.

Keep proper books and records in a manner to allow financial statements to be prepared in conformity with GAAP as required hereunder in respect of all material financial transactions and matters involving the material assets and business of Borrower and its Subsidiaries, taken as a whole, and maintain records pertaining to the Collateral in a manner to allow the Borrowing Base Certificate to be prepared in accordance with this Agreement.

5.2. Collateral Reporting.

Provide Agent with each of the reports set forth on Schedule 5.2 at the times specified therein. In addition, Borrower agrees to reasonably cooperate with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth above.

5.3. Financial Statements, Reports, Certificates.

Deliver to Agent each of the financial statements, reports, or other items set forth on Schedule 5.3 at the times specified therein. In addition, Borrower agrees that no Subsidiary of Borrower will have a fiscal year different from that of Borrower except to the extent such Subsidiary is acquired in accordance with the terms of this Agreement and has a different fiscal year from that of the Borrower at the time of such Acquisition.

5.4. Guarantor Reports.

Cause each Guarantor to deliver its annual financial statements at the time when Borrower provides its audited financial statements to Agent, but only to the extent such Guarantor's financial statements are not consolidated with Borrower's financial statements.

5.5. Inspection.

(a) Permit, upon reasonable prior notice except if an Event of Default has occurred and is continuing (which shall be at least ten (10) Business Days (or such shorter period agreed to by Borrower)), during regular business hours subject to reasonable scheduling accommodations for appropriate members of management and/or operations, 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 representatives of Borrower shall be allowed to be present), at Borrower's expense in accordance with the provisions of the Fee Letter, subject to the limitations set forth below in Section 5.5(c).

(b) Permit, upon reasonable prior notice except if an Event of Default has occurred and is continuing (which shall be at least ten (10) Business Days (or such shorter period agreed to by Borrower)), during regular business hours subject to reasonable scheduling accommodations for appropriate members of management and/or operations, Agent and each of its duly authorized representatives or agents to conduct field examinations, appraisals or valuations, at Borrower's expense in accordance with the provisions of the Fee Letter, subject to the limitations set forth below in Section 5.5(c).

(c) So long as no Event of Default shall have occurred and be continuing during a calendar year, Borrower shall not be obligated to reimburse Agent for more than 1 field examinations in such calendar year (increasing to 2 field examinations if Excess Availability is equal to or less than 20% of the Maximum Revolver Amount at any time during the immediately preceding 12 month period), and 1 inventory appraisal in such calendar year, in each case, except for field examinations and appraisals conducted in connection with a proposed Permitted Acquisition (whether or not consummated).

5.6. Maintenance of Properties.

Maintain and preserve all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, and casualty, condemnation and Permitted Dispositions excepted (and except where the failure to do so could not reasonably be expected to result in a Material Adverse Change).

5.7. Taxes.

Cause all state and federal income tax and all other material assessments and taxes, whether real, personal, or otherwise, due or payable by, or imposed, levied, or assessed against Borrower, its Subsidiaries, or any of their respective assets to be paid in full, before delinquency

or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest.

5.8. Insurance.

(a) At Borrower's expense, maintain insurance respecting its and its Domestic Subsidiaries' assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrower also shall maintain business interruption, public liability, and product liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be in such amounts and with such insurance companies as are reasonably satisfactory to Agent. Borrower shall deliver certificates of insurance with respect to such policies (and, upon request of Agent, copies of such policies) to Agent with an endorsement naming Agent, as applicable, as (i) an additional insured with respect to liability policies, and (ii) as a loss payee, as the interests of the Agent and the Lenders may appear, with respect to each other policy covering the Collateral. Each policy of insurance or endorsement shall contain a clause requiring the insurer to give not less than 30 days prior written notice to Agent in the event of cancellation of the policy for any reason whatsoever.

(b) Borrower shall give Agent prompt notice of any loss of any Collateral exceeding \$5,000,000 covered by such insurance. So long as no Event of Default has occurred and is continuing, Borrower shall have the exclusive right to adjust any losses payable under any such insurance policies which are less than \$5,000,000. Following the occurrence and during the continuation of an Event of Default, or in the case of any losses of any Collateral payable under such insurance exceeding \$5,000,000, Agent shall have the exclusive right to adjust any losses payable under any such insurance policies, without any liability to Borrower whatsoever in respect of such adjustments.

5.9. Location of Inventory.

Keep Borrower's and each other Loan Party's Inventory only at the locations identified on Schedule E-1 and their chief executive offices only at the locations identified on Schedule 4.7(b); provided, however, that Borrower may amend Schedule E-1 or Schedule 4.7(b) so long as such amendment occurs by written notice to Agent not less than 10 Business Days prior to the date on which such Inventory is moved to such new location or such chief executive office is relocated, so long as such new location is in the continental United States.

5.10. Compliance with Laws.

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 Change.

5.11. [Reserved.]

5.12. Existence.

Except as otherwise permitted under Section 6.3 or Section 6.4, at all times (a) preserve and keep in full force and effect Borrower's and its Subsidiaries valid existence and good standing in its jurisdiction of organization and (b) preserve and keep in full force and effect Borrower's and its Subsidiaries good standing in each other jurisdiction where the failure to be so qualified would reasonably be expected to result in a Material Adverse Change and, except as could not reasonably be expected to result in a Material Adverse Change, any rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses.

5.13. Environmental.

(a) Keep any property either owned or operated by 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 with all Environmental Laws other than Environmental Laws the non-compliance with which could not reasonably be expected to result in a Material Adverse Change, (c) promptly notify Agent of any release of a Hazardous Material in any reportable quantity from or onto property owned or operated by Borrower or its Subsidiaries and take any Remedial Actions required to abate said release or otherwise to come into compliance with applicable Environmental Law, other than releases which could not reasonably be expected to result in a Material Adverse Change, 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 (to the extent, in the cases of clauses (ii) and (iii) below, any of the following could reasonably be expected to result in a Material Adverse Change): (i) notice that an Environmental Lien has been filed against any of the real or personal property of Borrower or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against Borrower or its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority.

5.14. Disclosure Updates.

Promptly and in no event later than 5 Business Days after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report furnished to the Lender Group 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; provided, however, Borrower shall not have any such obligation with regard to any weekly inventory report submitted pursuant to clause (b) of Schedule 5.2. 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.

5.15. Control Agreements.

Except for Excluded Accounts, take all reasonable steps in order for Agent to obtain control in accordance with Sections 8-106, 9-104, 9-105, 9-106, and 9-107 of the Code with respect to (subject to the proviso contained in Section 6.12) all of its Securities Accounts, Deposit

Accounts electronic chattel paper, investment property, and letter-of-credit rights of the Loan Parties.

5.16. Formation of Subsidiaries.

At the time that any Loan Party forms any direct or indirect Domestic Subsidiary that constitutes a Material Subsidiary, acquires any direct or indirect Domestic Subsidiary after the Closing Date that constitutes a Material Subsidiary or at any time when any direct or indirect Subsidiary of a Loan Party that previously was an Immaterial Subsidiary becomes a Material Subsidiary, Borrower or such Guarantor shall, within thirty (30) days of such event (or such later date as permitted by Agent) (a) cause such new Domestic Subsidiary to provide to Agent a joinder to the Security Agreement and execute and delivery a Guaranty, together with such other security documents, 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 Domestic Subsidiary to the extent such assets are (i) of the type that would normally be included in the Collateral or (ii) constitute no more than 65% of the Stock of any Subsidiary that is not a Domestic Subsidiary), and (b) provide to Agent all other documentation, including one or more opinions of counsel reasonably satisfactory to Agent, which is reasonable with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 5.16 shall be a Loan Document.

5.17. Further Assurances.

At any time upon the request of Agent, Borrower shall execute or deliver to Agent, and shall cause each other Loan Party to execute or deliver to Agent, any and all financing statements, security agreements, pledges, assignments, opinions of counsel, and all other documents (collectively, the "Additional Documents") that Agent may reasonably request in writing in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect the Agent's Liens in all of the properties and assets of Borrower and the Loan Parties constituting Collateral (whether now owned or hereafter arising or acquired, tangible or intangible) to the extent such properties and assets are of the type that would normally be included in the Collateral and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, if Borrower or any Subsidiary refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time not to exceed ten (10) days following the request to do so, Borrower authorizes Agent to execute any such Additional Documents in Borrower's or its Subsidiary's name, as applicable, and authorizes Agent to file such executed Additional Documents in any appropriate filing office. Notwithstanding anything to the contrary contained herein (including Section 5.11 hereof and this Section 5.12) or in any other Loan Document, Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has completed its Patriot Act searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be satisfactory to Agent.

5.18. [Intentionally Omitted].

5.19. Growers' Liens.

So long as Borrower purchases agricultural products from Protected Vendors, Borrower shall (i) register with the Secretary of State (or other designated individual or office) in each FSA State in which Protected Vendors are located so as to receive the centrally compiled list of secured creditors published by each such state pursuant to the FSA, (ii) monitor the receipt of notices of Liens and/or trusts on its assets under any Growers' Lien Law and, (iii) where the provisions of the FSA are applicable, issue joint checks to growers or suppliers and their respective secured parties or otherwise obtain a release of such secured party's Lien in accordance with the FSA.

5.20. OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.

Borrower will, and will cause each of its Subsidiaries to (i) comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws and (ii) implement and maintain in effect policies and procedures designed to ensure compliance by Borrower and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

6. NEGATIVE COVENANTS.

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, Borrower will not and will not permit any of its Subsidiaries to do any of the following:

6.1. Indebtedness.

Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except:

- (a) Indebtedness evidenced by this Agreement and the other Loan Documents, together with Indebtedness owed to Underlying Issuers with respect to Underlying Letters of Credit;
- (b) Indebtedness set forth on Schedule 4.19 and any Refinancing Indebtedness in respect of such Indebtedness;
- (c) Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness in an aggregate outstanding principal amount not to exceed at any time \$10,000,000;
- (d) endorsement of instruments or other payment items for deposit;
- (e) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;
- (f) guarantees of any Indebtedness permitted hereunder;

(g) 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 "commercial cards", "procurement cards" or "p-cards"), or Cash Management Services,

(h) Indebtedness arising from any Hedge Obligations or other Third Party Derivative Obligations incurred in the ordinary course of business, for bona fide hedging purposes and not for speculations;

(i) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or unemployment (including premiums related thereto), property, casualty, or liability insurance or self-insurance and similar obligations, pursuant to reimbursement or indemnification obligations to such Person, and other types of social security, pension obligations, vacation pay, health, disability or other employee benefits, in each case incurred in the ordinary course of business;

(j) Indebtedness consisting of insurance premiums accrued but not yet due and the financing of insurance premiums;

(k) Indebtedness of any Person that becomes a Loan Party or a Subsidiary of Borrower after the date of this Agreement which was incurred prior to the time such Person becomes a Loan Party or Subsidiary, provided that (i) such Indebtedness is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party or Subsidiary and (ii) such Indebtedness shall not be assumed or guaranteed by any other Loan Party or Subsidiary;

(l) Indebtedness constituting Permitted Investments;

(m) Indemnification obligations and obligations in respect of customary purchase price adjustments, working capital adjustments and other similar obligations incurred in connection with any Permitted Acquisition;

(n) unsecured Subordinated Indebtedness in an aggregate outstanding principal amount not to exceed \$10,000,000 at any time; and

(o) additional unsecured Indebtedness in an aggregate outstanding principal amount not to exceed \$20,000,000 at any time.

6.2. Liens.

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.

Other than in order to consummate a Permitted Acquisition:

(a) enter into any merger or consolidation, except (i) for any merger between Loan Parties, provided that Borrower shall be the surviving entity of any such merger to which it

is a party, (ii) for any merger between a Loan Party and a Subsidiary of Borrower that is not a Loan Party so long as such Loan Party is the surviving entity of such merger, (iii) for any merger between Subsidiaries of any Loan Party that are not Loan Parties and (iv) that any Subsidiary may effect a merger to consummate a Permitted Disposition;

(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 Borrower with nominal assets and liabilities, (ii) the liquidation or dissolution of any Loan Party (other than Borrower) so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Loan Party that is not liquidating or dissolving, and (iii) the liquidation or dissolution of any Subsidiary of Borrower that is not a Loan Party so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary of Borrower that is not liquidating or dissolving; or

(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.

6.4. Disposal of Collateral.

Other than Permitted Dispositions or transactions permitted by Section 6.3 (other than Section 6.3(a)(iv)), convey, sell, lease, license, assign, transfer, or otherwise dispose of any of Borrower's or its Subsidiaries assets that constitute Collateral (including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division").

6.5. Change Name.

Change Borrower's or any Loan Party's name, organizational identification number, state of organization or organizational identity; provided, however, that (i) Borrower or any Loan Party may change their names upon at least ten (10) days prior written notice to Agent of such change and so long as, prior to the effectiveness of such change, Borrower provides any financing statements necessary to perfect and continue perfection of Agent's Liens, and (ii) any Loan Party (other than Borrower) may change its organizational identification number, state of organization or organizational identity (provided that any change in a Loan Party's jurisdiction of organization shall not result in any Loan Party being organized in any jurisdiction other than a state of the United States or Washington D.C.) upon at least ten (10) days prior written notice to Agent of such change and so long as, prior to the effectiveness of such change, Borrower provides any documents, agreements, instruments and financing statements necessary or reasonably requested by Agent to perfect and continue perfection of Agent's Liens.

6.6. Nature of Business.

Make any change in the nature of its or their business as described in Schedule 6.6 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 Borrower or any Subsidiary from engaging in any business or activity that is reasonably related or ancillary to its or their business.

6.7. Prepayments and Amendments.

Except in connection with Refinancing Indebtedness permitted by Section 6.1,

(a) optionally prepay, redeem, defease, purchase, or otherwise acquire Indebtedness under the Term Loan Documents unless at the time of and immediately after giving effect to such optional prepayment, the Payment Conditions are satisfied;

(b) 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

(c) directly or indirectly, amend, modify, alter, increase, or change any of the terms or conditions of any Term Loan Document except to the extent that such amendment, modification, alteration, increase, or change could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

6.8. [Reserved].

6.9. [Reserved].

6.10. Distributions.

Make any distribution or declare or pay any dividends (in cash or other property) on, or purchase, acquire, redeem, or retire any of Borrower's Stock, of any class, whether now or hereafter outstanding; provided, that, Borrower may make (a) dividends, distributions, repurchases, redemptions and retirements of common stock and other equity interests to the extent payable solely in the form of Qualified Stock of Borrower or any of its Subsidiaries, (b) non-cash repurchases of common stock and other equity interests deemed to occur upon exercise of stock options or warrants if it represents a portion of the exercise price thereof or for purposes of tax withholding required to be paid in connection with such exercise, and (c) up to four dividends or distributions on its Stock, or purchase, acquire, redeem or retire its Stock in any fiscal year so long as (x) the aggregate amount of such dividends, distributions, purchases, acquisitions, redemptions and retirements made in any fiscal year do not exceed \$75,000,000 in the aggregate and (y) immediately before and after giving effect to the making of any such dividend, distribution, purchase, acquisition, redemption or retirement, (i) no Default or Event of Default shall have occurred and be continuing and (ii) Excess Availability shall exceed \$30,000,000.

6.11. Accounting Methods.

Modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP), except with the consent of Agent.

6.12. Investments.

Except for Permitted Investments, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent indemnification obligations) for or in connection with any Investment.

6.13. Transactions with Affiliates.

Directly or indirectly enter into or permit to exist any transaction with any Affiliate of Borrower or any of its Subsidiaries, except for:

(a) transactions (other than payment of management, consulting, monitoring, or advisory fees) between Borrower or its Subsidiaries, on the one hand, and any Affiliate of Borrower or its Subsidiaries, on the other hand, (i) so long as such transactions (A) are disclosed to and approved by the independent audit committee of the Borrower and (B) are fully disclosed to Agent if they involve one or more payments by Borrower or its Subsidiaries in excess of \$5,000,000 for any single transaction or series of transactions (it being agreed that if such transactions are disclosed by Borrower pursuant to a public filing pursuant to the Exchange Act or the Securities Act of 1933, as in effect from time to time, the same shall be deemed disclosed to Agent) and (ii) in respect of (including payments under) the lease agreement with respect to the facility located in Selma, Texas;

(b) transactions or payments pursuant to any employee, officer or director compensation or benefit plans or other compensation and indemnity arrangements entered into in the ordinary course of business; and

(c) in the ordinary course of and pursuant to the reasonable requirements of Borrower's or its Subsidiary's business and upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary that would be obtained in a comparable arm's length transaction with a Person not an Affiliate of Borrower or such Subsidiary.

6.14. Use of Proceeds.

Use the proceeds of the Advances for any purpose other than (a) on the Closing Date, to pay transactional fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, and (b) thereafter, consistent with the terms and conditions hereof, for its lawful and permitted purposes; provided that (x) no part of the proceeds of the Advances 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 Advance or Letter of Credit will be used, directly or 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 Advance or Letter of Credit will be used, directly or 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.

6.15. [Reserved]

6.16. Fixed Charge Coverage Ratio.

Have, on any date on which Average Excess Availability is less than \$25,000,000, a Fixed Charge Coverage Ratio, measured on a trailing 12-month-end basis on the last day of each fiscal month of Borrower, less than the required amount set forth in the following table for the applicable period set forth opposite thereto:

Applicable Ratio	Applicable Period
1.00 : 1.00	For the trailing 12 months ending on the last day of the then most-recently ended fiscal month of Borrower and the last day of each fiscal month thereafter until such time as Average Excess Availability is equal to or greater than \$25,000,000 for three consecutive fiscal months

7. 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:

THESE SUBSECTIONS ARE MANUALLY NUMBERED!!!

7.1 If Borrower fails to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest or fees 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 3 Business Days, or (b) all or any portion of the principal of the Obligations;

7.2 If Borrower or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of Sections 2.7, 5.2, 5.3, 5.4, 5.5, 5.8, 5.12, 5.14, 5.16, 5.20, 5.21 and 6.1 through 6.16 of this Agreement or Section 6 of the Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.7, 5.9, and 5.15 of this Agreement and such failure continues for a period of 10 days after the earlier of (i) the date on which such failure shall first become known to any Responsible Officer of Borrower or (ii) written notice thereof is given to Borrower by Agent; or

(c) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 7 (in which event such other provision of this Section 7 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any Responsible Officer of Borrower or (ii) written notice thereof is given to Borrower by Agent;

7.3 **[Reserved]**;

7.4 If an Insolvency Proceeding is commenced by Borrower or any of its Subsidiaries;

7.5 If an Insolvency Proceeding is commenced against Borrower or any of its Subsidiaries and any of the following events occur: (a) Borrower 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 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, Borrower or any of its Subsidiaries, or (e) an order for relief shall have been issued or entered therein;

7.6 **[Reserved]**;

7.7 If one or more judgments, orders, or awards involving an aggregate amount of \$5,000,000, or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of thirty (30) 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;

7.8 If there is a default in one or more agreements to which Borrower or any of its Subsidiaries is a party with one or more third Persons relative to Borrower's or any of its Subsidiaries' Indebtedness involving an aggregate amount of \$5,000,000 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(s), irrespective of whether exercised, to accelerate the maturity of Borrower's or the applicable Subsidiary's obligations thereunder, or if there shall have occurred an "Event of Default" under the Term Loan Documents and such "Event of Default" shall not have been cured or waived in accordance with the terms of the Term Loan Documents;

7.9 If any warranty, representation, statement, or Record made herein or in any other Loan Document or delivered to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof; provided, however, that no representation or warranty under Section 3.2(a) shall be deemed made when Agent funds any Overadvance or Protective Advance that has not been requested by Borrower;

7.10 If the obligation of any Guarantor under any Guaranty is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement) or if any Guarantor repudiates or revokes or purports to repudiate or revoke any such Guaranty;

7.11 If the 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 permitted by the terms hereof or thereof, first priority Lien on or security interest in the Collateral covered hereby or thereby, except as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement;

7.12 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 the validity or enforceability thereof shall be contested by Borrower or its Subsidiaries, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document; or

7.13 A Change of Control shall occur.

8. THE LENDER GROUP'S RIGHTS AND REMEDIES.

8.1. Rights and Remedies.

Upon the occurrence, and during the continuation, of an Event of Default, upon prior written notice to Borrower, the Required Lenders may authorize and instruct Agent to do any one or more of the following on behalf of the Lender Group (and Agent, acting upon the instructions of the Required Lenders, shall do the same on behalf of the Lender Group):

- (a) Declare all or any portion of the Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable;
- (b) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement, under any of the Loan Documents, or under any other agreement between Borrower and the Lender Group;
- (c) Terminate this Agreement and any of the other Loan Documents as to any future liability or obligation of the Lender Group, but without affecting any of the Agent's Liens in the Collateral and without affecting the Obligations; and
- (d) The Lender Group shall have all other rights and remedies available at law or in equity or pursuant to any other Loan Document.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 7.4 or Section 7.5, in addition to the remedies set forth above, without any notice to Borrower or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations then outstanding, together with all accrued and unpaid interest thereon and all fees and all other amounts due under this Agreement and the other Loan Documents, shall automatically and immediately become due and payable, without presentment, demand, protest, or notice of any kind, all of which are expressly waived by Borrower.

8.2. 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 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. TAXES AND EXPENSES.

If Borrower or its Subsidiaries fail to pay any monies (whether taxes, assessments, insurance premiums, or, in the case of leased properties or assets, rents or other amounts payable under such leases) due to third Persons, or fails to make any deposits or furnish any required proof of payment or deposit, all as required under the terms of this Agreement, then, Agent, in its sole discretion and without prior notice to Borrower, may do any or all of the following: (a) make payment of the same or any part thereof whenever an Event of Default has occurred and is continuing or (b) in the case of the failure to comply with Section 5.8 hereof, obtain and maintain insurance policies of the type described in Section 5.8 and take any action with respect to such policies as Agent deems prudent. No such payments shall constitute an agreement by the Lender Group to make similar payments in the future or a waiver by the Lender Group of any Event of Default under this Agreement. Agent need not inquire as to, or contest the validity of, any such expense, tax, or Lien and the receipt of the usual official notice for the payment thereof shall be conclusive evidence that the same was validly due and owing.

10. WAIVERS; INDEMNIFICATION.

10.1. Demand; Protest; Etc.

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 Borrower may in any way be liable.

10.2. The Lender Group's Liability for Collateral.

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 Borrower.

10.3. Indemnification.

Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, 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 Borrower shall not be liable for costs and expenses

(including attorneys' fees) of any Lender (other than Wells Fargo) incurred in advising, structuring, drafting, reviewing, closings 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 Borrower's and its Subsidiaries' compliance with the terms of the Loan Documents (provided that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the 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 investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by Borrower or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities and Costs or Remedial Actions related in any way to any such assets or properties of Borrower or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing notwithstanding, Borrower shall have no 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 of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower 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 by Borrower or Agent to the other 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 Borrower or Agent, as applicable, may designate to each other 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:	JOHN B. SANFILIPPO & SON, INC 1703 Randall Road
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Elgin, IL 60123
Attn: Michael Valentine, Chief Financial Officer
Fax No. (866) 610-1294

with a copy to: JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
Attn: Brian S. Hart, Esq.
Fax No.: (312) 923-2718

If to Agent: WELLS FARGO CAPITAL FINANCE, LLC
1100 Abernathy Road, Suite 1600
Atlanta, GA 30328
Attn: Portfolio Manager
Fax No. (770) 804-0785

With a copy to: GOLDBERG KOHN LTD.
55 East Monroe Street, Suite 3300
Chicago, IL 60603
Attn: Keith G. Radner, Esq.
Fax No.: (312) 863-7445

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 (3) Business Days after 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 acknowledgement from the intended receipt (such as the "return receipt requested" function, as available, return email or other written acknowledgement).

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(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, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS 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 ILLINOIS.

(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 COOK, STATE OF ILLINOIS; PROVIDED, HOWEVER, 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. 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) BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION 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. 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.

13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

13.1. Assignments and Participations.

(a) (i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees so long as such prospective assignee is an Eligible Transferee (each, an "Assignee"), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(A) Borrower; provided, that no consent of Borrower shall be required (1) if a Default or Event of Default has occurred and is continuing, or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender; provided further, that Borrower shall be deemed to have consented to a proposed assignment unless they object thereto by written notice to Agent within ten (10) Business Days after having received notice thereof (it being acknowledged and agreed that such objection by Borrower may be based on Borrower's demonstration, to the satisfaction of Agent, in its Permitted Discretion, that the proposed assignee is a direct business competitor (or an Affiliate thereof) of Borrower or any of its Subsidiaries); and

(B) Agent, Swing Lender, and Issuing Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) no assignment may be made to a natural 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 a minimum amount (unless waived by Agent) of \$5,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender, or (II) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000),

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement,

(E) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that Borrower and Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrower 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 notifies the assigning Lender (with a copy to Borrower) that it has received an 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 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 hereof) 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, however, 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) of this Agreement.

(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 Borrower or the performance or observance by Borrower 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 as are delegated to Agent, by the terms hereof, 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, however, 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 maintain a written register of each Participant to whom it has sold all or any portion of its Obligations, such register to reflect the date of sale and face amount or percentage interest sold, and shall not permit any Participant to transfer its interest in the Obligations except through the register maintained by the Originating Lender, (iii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iv) Borrower, 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, (v) 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, or (E) change the amount or due dates of scheduled principal repayments or prepayments or premiums, and (vi) all amounts payable by Borrower 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, Borrower, the Collections of Borrower or its Subsidiaries, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation, 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 Borrower 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 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.

13.2. Successors.

This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not 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 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 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 Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender,

(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,

(v) amend, modify, or eliminate Section 3.1,

(vi) amend, modify, or eliminate Section 15.11,

(vii) other than as permitted by Section 15.11, release or contractually subordinate Agent's Lien in and to any of the Collateral,

(viii) amend, modify, or eliminate the definitions of "Required Lenders", "Supermajority Lenders" or "Pro Rata Share",

(ix) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents, or

(x) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i) or (ii),

(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 Borrower (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, Borrower, and the Required Lenders;

(c) No amendment, waiver, modification, elimination, or consent shall amend, modify or eliminate, without written consent of Agent, Borrower and the Supermajority Lenders, the definition of Borrowing Base or the definitions of "Eligible Accounts," "Eligible Inventory," "Governmental Accounts," "Inventory Sublimit," "Packaging Inventory," "Seed Exchange Accounts" or "Seed Inventory" to the extent that any such change results in more credit being made available to Borrower based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount;

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Lender, or any other rights or duties of Issuing Lender under this Agreement or the other Loan Documents, without the written consent of Issuing Lender, Agent, Borrower, 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, Borrower, and the Required Lenders; and

(f) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Loan Party, shall not require consent by or the agreement of any Loan Party, (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender other than any of the matters governed by Section 14.1(a)(i) through (iii) that affect such Lender, and (iii) any amendment contemplated by Section 2.13(d)(iii) of this Agreement in connection with a Benchmark Transition Event or an Early Opt-in Election shall be effective as contemplated by such Section 2.13(d)(iii) hereof.

14.2. Replacement of Holdout Lender.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the unanimous consent, authorization, or agreement of all Lenders or all Lenders affected thereby, and a Lender ("Holdout Lender") fails to give its consent, authorization, or agreement, or (ii) any

Lender makes a claim for compensation under Sections 2.12(1), 2.14 or 16, then Borrower or Agent, upon at least 5 Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization or agreement (a "Non-Consenting Lender") or any Lender that made such a claim (a "Claiming Lender") with one or more substitute Lenders (each, a "Replacement Lender"), and the Non-Consenting Lender or Claiming Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender or Claiming 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 Claiming Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender or Claiming Lender, as applicable, being repaid its share of the outstanding Obligations (including an assumption of its Pro Rata Share of the Risk Participation Liability) without any premium or penalty of any kind whatsoever. If the Non-Consenting Lender or Claiming Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Non-Consenting Lender or Claiming Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Claiming Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender or Claiming Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender or Claiming Lender, as applicable, shall remain obligated to make the Non-Consenting Lender's or Claiming Lender's, as applicable, Pro Rata Share of Advances and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of the Risk Participation Liability of such Letter 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 Borrower 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 WFF as its representative under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes 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 such on the express conditions contained in this Section 15. The provisions of this Section 15 are solely for the benefit of Agent and the Lenders, and Borrower and its Subsidiaries shall have no rights as a third party beneficiary of any of the provisions contained herein. 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, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, 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; it being expressly understood and agreed that the use of the word "Agent" is for convenience only, that WFF is merely the representative of the Lenders, and only has the contractual duties set forth herein. 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, the Collections of Borrower and its Subsidiaries, 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, (c) make Advances, for itself or on behalf of Lenders as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of Borrower and its Subsidiaries 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 with respect to the Collateral and the Collections of Borrower and its Subsidiaries, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrower or its Subsidiaries, the Obligations, the Collateral, the Collections of Borrower and its Subsidiaries, 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 for any recital, statement, representation or warranty made by Borrower 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 Borrower 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 Lender 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 Borrower or its Subsidiaries.

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 Borrower 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 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 requisite Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

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 Borrower 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 8; provided, however, 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 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 Borrower and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such 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 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 Borrower. Each Lender also represents 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 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 with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons.

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 Borrower is 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 the Collections of Borrower and its Subsidiaries received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses by Borrower or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's Pro Rata Share thereof. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), according to their Pro Rata Shares, from and against any and all Indemnified Liabilities; provided, however, 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 an Advance or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's Pro Rata 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, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. 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.

WFF and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though WFF 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 that, pursuant to such activities, WFF or its Affiliates may receive information regarding Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders 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 WFF in its individual capacity.

15.9. Successor Agent.

Agent may resign as Agent upon 45 days notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrower. If Agent resigns under this Agreement, the Required Lenders shall appoint a successor Agent for the Lenders with the consent of Borrower, so long as no Event of Default shall have occurred and be continuing, which consent shall not be unreasonably withheld. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent shall appoint, after consulting with the Lenders and Borrower, a successor Agent from among the Lenders. 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 the consent of Borrower so long as no Event of Default shall have occurred and be continuing, which consent shall not be unreasonably withheld. 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.

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, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower 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. The other members of the Lender Group acknowledge that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders 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, at its option and in its sole discretion, to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrower of all Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrower certifies to Agent that the sale or disposition is permitted under Section 6.4 of this Agreement or the other Loan Documents (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which Borrower or its Subsidiaries owned no interest at the time the Agent's Lien was granted nor at any time thereafter, or (iv) constituting property leased or licensed to Borrower or its Subsidiaries under a lease or license that has expired or is terminated in a transaction permitted under this Agreement. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrower at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, however, that (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would 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 being released) upon (or obligations of Borrower in respect of) all interests retained by Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to irrevocably authorize) Agent, at its option and in its sole discretion, to subordinate (by contract or otherwise) any Lien granted to or held by Agent on any property under any Loan Document (A) to the holder of any Permitted Lien on such property if such Permitted Lien secures purchase money Indebtedness (including Capitalized Lease Obligations) permitted under this Agreement 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 to assure that the Collateral exists or is owned by Borrower or its Subsidiaries or is cared for, protected, or insured or has been encumbered, or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or 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 as to any of the foregoing, except as otherwise 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 only if an Event of Default shall have occurred and be continuing, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent and only if an Event of Default shall have occurred and be continuing, set off against the Obligations, any amounts owing by such Lender to Borrower or its Subsidiaries or any Deposit Accounts of Borrower 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 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, however, 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 as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting the Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected only 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 shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15. Concerning the Collateral and Related Loan Documents.

Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees 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.

15.16. Field Audits and 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 audit or examination report respecting Borrower or its Subsidiaries (each a "Report" and collectively, "Reports") 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 audit or examination will inspect only specific information regarding Borrower and its Subsidiaries and will rely significantly upon Borrower's and its Subsidiaries' books and records, as well as on representations of Borrower's personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Borrower and its 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 Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrower, 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 Borrower or its Subsidiaries to Agent that has not been contemporaneously provided by 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 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 Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Borrower or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrower a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17. Several Obligations; No Liability.

Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to Borrower or any other Person for any failure by any other Lender to fulfill its obligations to make credit available hereunder, nor to advance for it or on its behalf in connection with its Commitment, nor to take any other action on its behalf hereunder or in connection with the financing contemplated herein.

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, original or copies of original tax receipts evidencing such payment by the Loan Parties. Furthermore, if any such Tax is an Indemnified Taxes or an Indemnified Tax is so levied or imposed, the Loan Parties agree to pay

the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.1 after withholding or deduction for or on account of any Indemnified Taxes, will not be less than the amount provided for herein. The Loan Parties will promptly pay any Other Taxes or reimburse Agent for such Other Taxes upon Agent's demand. The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax 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 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.

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 Borrower, at the time or times reasonably requested by the Loan Parties or Agent, such properly completed and executed documentation reasonably requested by the Loan Parties or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding, including without limitation 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 Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrower 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 United States withholding or backup withholding tax.

(b) Each Lender or Participant shall deliver to the Loan Parties and Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Lender becomes a Lender or Participant under this Agreement (and from time to time thereafter upon the reasonable request of the Loan Parties or 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 and provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and 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 Borrower, to deliver to Agent and Borrower (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, or the providing of or delivery of such forms in the Lender's reasonable judgment would not subject such Lender to any material unreimbursed cost or expense or materially prejudice the legal or commercial position of such Lender (or its Affiliates); provided, further, that nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent and Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrower to such Lender or Participant, such Lender or Participant agrees to notify Agent and 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 Borrower to such Lender or Participant. To the extent of such percentage amount, Agent and 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. Borrower 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 Borrower 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.

(f) Each Lender and Participant agree that if any form or certification such Lender or a Participant previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Loan Parties and Agent in writing of its legal inability to do so.

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 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 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 Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4. Severability of Provisions.

Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5. Bank Product Providers.

Each Bank Product Provider in its capacity as such shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents. It is understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the applicable Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (*less* any distributions made to such Bank Product Provider on account thereof). Borrower may obtain Bank Products from any Bank Product Provider, although Borrower are not required to do so. 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. Lender-Creditor Relationship.

The relationship between the Lenders and Agent, on the one hand, and Borrower, 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 Borrower arising out of or in connection with, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and Borrower, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7. Counterparts; Electronic Execution.

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Execution of any such counterpart may be by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, as in effect from time to time, state enactments of the Uniform Electronic Transactions Act, as in effect from time to time, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Agent reserves the right, in its discretion, to accept, deny, or condition acceptance of any electronic signature on this Agreement. Any party delivering an executed counterpart of this Agreement by faxed, scanned or photocopied manual signature shall also deliver an original manually executed counterpart, but the failure to deliver an original manually executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement. The foregoing shall apply to each other Loan Document, and any notice delivered hereunder or thereunder, *mutatis mutandis*.

17.8. Revival and Reinstatement of Obligations.

If the incurrence or payment of the Obligations by Borrower or Guarantor or the transfer to the Lender Group of any property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of the Lender Group related thereto, the liability of Borrower or Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

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 (it being understood that such 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 Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers); provided, that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided, that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrower 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 Borrower 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 Borrower, (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 Borrower 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 Borrower 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 Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrower 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 Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent.

(c) Each Loan Party agrees that Agent may make materials or information provided by or on behalf of Borrower hereunder (collectively, "Borrower Materials") available to the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of the Agent-Related Persons have any liability to the Loan Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

17.10. Lender Group Expenses.

Borrower agrees to pay any and all Lender Group Expenses promptly after demand therefor by Agent and agrees that its obligations contained in this Section 17.10 shall survive payment or satisfaction in full of all other Obligations.

17.11. USA PATRIOT Act.

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 Borrower.

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.

17.13. Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

17.14. Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States). In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective

under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

JOHN B. SANFILIPPO & SON, INC., a Delaware corporation

By: /s/ Frank Pellegrino
Name: Frank Pellegrino
Title: Chief Financial Officer

WELLS FARGO CAPITAL FINANCE, LLC, a Delaware limited liability company, as Agent and as a Lender

By: /s/ Barry Felker
Name: Barry Felker
Title: Vice President

SOUTHWEST GEORGIA FARM CREDIT, ACA for itself and as
agent/nominee for
Southwest Georgia Farm Credit, FLCA, as a Lender

By: /s/ Jared Renfroe
Name: Jared Renfroe
Title: Vice President

Schedule 1.1

As used in the Agreement, the following terms shall have the following definitions:

"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.

"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).

"ACH Transactions" means any cash management or related services (including the Automated Clearing House processing of electronic fund transfers through the direct Federal Reserve Fedline system) provided by a Bank Product Provider for the account of Borrower or its Subsidiaries.

"Acquisition" means (a) the purchase or other acquisition by a Person or its Subsidiaries of all or substantially all of the assets of (or any division or business line of) any other Person, or (b) the purchase or other acquisition (whether by means of a merger, consolidation, or otherwise) by a Person or its Subsidiaries of all or substantially all of the Stock of any other Person.

"Act" has the meaning specified therefor in Section 17.11.

"Additional Documents" has the meaning specified therefor in Section 5.17.

"Additional Lender" has the meaning specified therefor in Section 2.15.

"Advances" has the meaning specified therefor in Section 2.1(a).

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

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of the definition of Eligible Accounts and Section 6.13 of the Agreement: (a) any Person which owns directly or indirectly 10% or more of the Stock 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.

"Agent" has the meaning specified therefor in the preamble to the 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 Borrower and the Lenders).

"Agent's Liens" means the Liens granted by Borrower or its Subsidiaries to Agent under the Loan Documents.

"Agreement" means the Amended and Restated Credit Agreement to which this Schedule 1.1 is attached.

"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.

"Application Event" means the occurrence of (a) a failure by Borrower to repay all of the Obligations on the Latest Maturity Date, or (b) an Event of Default and the election by the Required Lenders to declare all or any portion of the Obligations to be due and payable, to terminate the Revolver Commitment, or to exercise remedies against the Collateral.

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

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1.

"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 Borrower as an authorized person and authenticated through Agent's electronic platform or portal in accordance with its procedures for such authentication.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to the Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to the Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.13(d)(iii)(D).

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

"Average Excess Availability" means, as of any relevant date of determination in any calendar week, Excess Availability determined on a seven (7)-day average basis for the immediately preceding week for which a Borrowing Base Certificate has been delivered by Borrower (using weekly adjustments for Accounts and monthly adjustments for Inventory) in accordance with the Agent's normal availability tracking procedures; provided that the amount of such Excess Availability shall not be limited by the Maximum Revolver Amount or the Inventory Sublimit.

"Average Margin Availability" means, as of any relevant date of determination in any calendar month, Excess Availability determined on a 30-day average basis for the immediately preceding calendar month for which a Borrowing Base Certificate has been delivered by Borrower (using weekly adjustments for Accounts and monthly adjustments for Inventory) in accordance with the Agent's normal availability tracking procedures; provided that the amount of such Excess Availability shall not be limited by the Maximum Revolver Amount or the Inventory Sublimit.

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

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

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

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

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

"Bank Product Collateralization" means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank

Product Providers (other than the Hedge Providers) in an amount determined by Agent as sufficient to satisfy the reasonably estimated credit exposure, operational risk or processing risk with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

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

"Bank Product Provider" means any Lender or any of its Affiliates, including each of the foregoing in its capacity, if applicable, as a Hedge Provider; provided, that no such Person (other than Wells Fargo or its Affiliates) shall constitute a Bank Product Provider with respect to a Bank Product unless and until Agent receives a Bank Product Provider Agreement from such Person (a) on or prior to the Original Closing Date (or such later date as Agent shall agree to in writing in its sole discretion) with respect to Bank Products provided on or prior to the Original Closing Date, or (b) on or prior to the date that is 10 days after the provision of such Bank Product to a Loan Party or its Subsidiaries (or such later date as Agent shall agree to in writing in its sole discretion) with respect to Bank Products provided after the Original Closing Date; provided further, that if, at any time, a Lender ceases to be a Lender under this Agreement (prior to the payment in full of the Obligations), then, from and after the date on which it so ceases to be a Lender hereunder, neither it nor any of its Affiliates shall constitute Bank Product Providers and the obligations with respect to Bank Products provided by such former Lender or any of its Affiliates shall no longer constitute Bank Product Obligations.

"Bank Product Provider Agreement" means an agreement in substantially the form attached hereto as Exhibit B-2 to this Agreement, in form and substance satisfactory to Agent, duly executed by the applicable Bank Product Provider, the applicable Loan Parties, and Agent.

"Bank Product Reserve" means, as of any date of determination, the lesser of (a) \$3,000,000 and (b) those reserves that Agent deems reasonably necessary or appropriate to establish (based upon the Bank Product Providers' reasonable determination of the credit exposure of Borrower and its Subsidiaries in respect of Bank Products as notified to Agent) in respect of Bank Products then provided or outstanding.

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

"Base Rate" means, for any day, the greatest of (a) the Floor, (b) the Federal Funds Rate in effect on such day plus ½%, (c) Term SOFR for a one month tenor in effect on such day, plus 1%, provided that this clause (c) shall not be applicable during any period in which Term SOFR is unavailable or unascertainable, and (d) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate" in effect on such day, 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.

"Base Rate Loan" means the portion of the Advances that bears interest at a rate determined by reference to the Base Rate.

"Base Rate Margin" means, as of any date of determination, the following percentages *per annum*, based upon Average Margin Availability:

Level	Average Margin Availability	Base Rate Margin
I	<\$20,000,000	0.75 %
II	≥\$20,000,000 but < \$30,000,000	0.50%
III	≥\$30,000,000	0.25%

The Base Rate Margin shall be adjusted in accordance with the foregoing on the first day of each calendar month.

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.13(d)(iii)(A).

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

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

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

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

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

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

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

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

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

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

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

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

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.13(d)(iii) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.13(d)(iii).

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

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

"Benefit Plan" means a "defined benefit plan" (as defined in Section 3(35) of ERISA) for which Borrower or any Subsidiary or ERISA Affiliate of Borrower has been an "employer" (as defined in Section 3(5) of ERISA) within the past six years.

"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 the board of directors (or comparable managers) of Borrower or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

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

"Borrower" has the meaning specified therefor in the preamble to the Agreement.

"Borrowing" means a borrowing hereunder consisting of Advances 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 a Protective Advance.

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

(a) 85% of the amount of Eligible Accounts (other than Seed Exchange Accounts and Governmental Accounts) in respect of which the Account Debtor is located in the United States or Canada, *plus*

- (b) the lesser of
 - (i) 85% of the amount of Eligible Accounts (other than Seed Exchange Accounts and Governmental Accounts) in respect of which the Account Debtor is not located in the United States or Canada, and
 - (ii) \$5,000,000, *plus*
 - (c) the lesser of
 - (i) 85% of the amount of Eligible Accounts that are Governmental Accounts, and
 - (ii) \$2,000,000, *plus*
 - (d) the lesser of
 - (i) 50% of the amount of Eligible Accounts that are Seed Exchange Accounts, and
 - (ii) \$4,000,000, *plus*
 - (e) the lowest of
 - (i) 70% of the value of Eligible Inventory (excluding Seed Inventory, Packaging Inventory and Inventory in transit from one location of Borrower to another), *less* the Grower Payable Reserve,
 - (ii) 85% *times* the most recently determined Net Liquidation Percentage *times* the book value of Borrower's Inventory (excluding Seed Inventory, Packaging Inventory and Inventory in transit from one location of Borrower to another), *less* the Grower Payable Reserve and
 - (iii) (A) at any time during the months of January, February, March, April, May and June, \$117,500,000 and, (B) at all other times, \$92,500,000 (in each case, the "Inventory Sublimit"), *plus*
 - (f) the lowest of
 - (i) 35% of the value of Eligible Inventory that is Packaging Inventory,
 - (ii) 85% *times* the most recently determined gross liquidation value of Eligible Inventory constituting Packaging Inventory, and
 - (iii) \$3,500,000, *plus*
 - (g) the lesser of
 - (i) 50% of the value of Eligible Inventory constituting Seed Inventory, and
-

(ii) \$2,000,000, *plus*

(h) the lesser of

(i) 70% of the value of Eligible Inventory in transit from one location of the Borrower to another, and

(ii) \$1,000,000, *plus*

(i) **[Reserved]**, minus

(j) the sum of (i) the Dilution Reserve, if any, (ii) the Bank Product Reserve, and (iii) the aggregate amount of other reserves, if any, established by Agent under Section 2.1(b).

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

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

"Capital Expenditures" means, with respect to any Person for any period, the aggregate 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, excluding (a) expenditures paid with insurance or condemnation proceeds, (b) expenditures which reinvest the proceeds of asset sales, and (c) expenditures for leasehold improvements to the extent reimbursed by the applicable landlord.

"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, subject to Section 1.2, a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP (but excluding, for the avoidance of doubt, any "operating lease").

"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 1 year from the date of acquisition thereof, (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 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 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof having at the date of acquisition thereof combined capital and surplus of not less than \$250,000,000, (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 amount maintained with any such other bank is less than or equal to \$100,000 and 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 \$250,000,000, having a term of not more than seven (7) days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six (6) 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 or money market mutual funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (e) above.

"Cash Management Account" has the meaning specified therefor in Section 2.7(a).

"Cash Management Agreements" means those certain cash management agreements, in form and substance satisfactory to Agent, each of which is among Borrower or one of its Subsidiaries, Agent, and one of the Cash Management Banks, as amended, restated or otherwise modified from time to time.

"Cash Management Bank" has the meaning specified therefor in Section 2.7(a).

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

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

"Change of Control" means that (a) Permitted Holders fail to own and control, directly or indirectly, 51% or more of the Stock of Borrower having the right to vote for the election

of a majority of the members of the Board of Directors, (b) Permitted Holders fail to own and control, directly or indirectly, an amount of Class A common stock that is at least 12.5% of all of the Stock of Borrower having the right to vote for the election of the members of the Board of Directors, (c) any "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act), other than Permitted Holders, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 20%, or more, of the Stock of Borrower having the right to vote for the election of members of the Board of Directors, or (d) a majority of the members of the Board of Directors do not constitute Continuing Directors.

"Closing Date" means March 5, 2020.

"Code" means the Illinois 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 Borrower or its Subsidiaries in or upon which a Lien is granted under any of the Loan Documents; provided, that, Collateral shall not include Equipment.

"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, Accounts, or Inventory, in each case, in form and substance reasonably satisfactory to Agent, as the same may be amended, restated or otherwise modified from time to time.

"Collateral Use Agreement" means that certain Collateral Use and Access Agreement dated on or about the Original Closing Date among the Borrower, the Term Lender and Agent, as the same may be amended, restated or otherwise modified from time to time.

"Collection Account" means a Deposit Account of Borrower or any Loan Party, as applicable, which is used exclusively for deposits of collections and proceeds of Collateral and not as a disbursement or operating account upon which checks or other drafts may be drawn.

"Collections" means *all* cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds, but excluding cash proceeds of assets that are not Collateral).

"Commitment" means, with respect to each Lender, its Revolver Commitment, and, with respect to all Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or in the Assignment and Acceptance pursuant to which such Lender became a Lender hereunder, 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.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 delivered by the chief financial officer, vice president of finance, comptroller, principal accounting officer, treasurer, or assistant treasurer of Borrower to Agent.

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

"Continuing Director" means (a) any member of the Board of Directors who was a director (or comparable manager) of Borrower on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors, but excluding any such individual originally proposed for election in opposition to the Board of Directors in office at the Closing Date in an actual or threatened election contest relating to the election of the directors (or comparable managers) of Borrower and whose initial assumption of office resulted from such contest or the settlement thereof.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by Borrower 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), as the same may be amended, restated or otherwise modified from time to time.

"Copyright Security Agreement" has the meaning specified therefor in the 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 17.14 of the Agreement.

"Daily Balance" means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

"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.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Borrowings within two (2) Business Days of the date such Borrowings were required to be funded hereunder unless such Lender notifies Agent and 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 Lender, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified Borrower, Agent or Issuing Lender 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 Borrowing 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 Borrower, to confirm in writing to Agent and 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 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 Borrower, Issuing Lender, and each Lender.

"Defaulting Lender Rate" means (a) for the first 3 days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Advances that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

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

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

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior 12 consecutive months, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrower's Accounts during such period, by (b) Borrower's 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 1 percentage point for each percentage point by which Dilution is in excess of 5%.

"Disqualified Stock" means any Stock that, by their terms (or by the terms of any security or other Stock 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 Stock), 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 Stock), 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 Stock that would constitute Disqualified Stock, in each case, prior to the date that is 180 days after the Latest Maturity Date.

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

"Domestic Subsidiary" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"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, (a) Borrower's consolidated net earnings (or loss), minus (b)(i) extraordinary gains, and (ii) interest income for such period, plus (c)(i) interest expense, (ii) income taxes, (iii) depreciation and amortization, (iv) other non-cash expenses, charges and losses (including, without limitation, equity compensation expenses, retirement plan expense, impairment charges and charges and losses arising from accounting pronouncements), (v) extraordinary or nonrecurring non-cash losses for such period, (vi) fees, costs and expenses (including fees, costs and expenses paid to Agent and Lenders or the Term Lender) incurred on or prior to the Closing Date in connection with the Loan Documents and the Term Loan Documents, (vii) fees, costs and expenses deducted in the determination of net income for the relevant period in connection with Project Wild, provided that amounts added back to EBITDA pursuant to this clause shall not exceed \$5,000,000 in the aggregate during the term of this Agreement, (viii) [**Intentionally Omitted**], (ix) fees, costs and expenses (including fees, costs and expenses paid to Agent and Lenders or the Term Lender) incurred after the Closing Date in

connection with the Loan Documents and the Term Loan Documents (in each case, including in connection with any amendment, consent or other modification (or proposed amendment, consent or modification) thereto) and fees, costs and expenses paid or reimbursed to (or for the benefit of) Agent, the Lenders, Issuing Lender, any Indemnified Person, any Bank Product Provider or the Term Lender, provided, that the aggregate amount of all added back to net earnings (or loss) during such fiscal period pursuant to this clause (ix), together with the aggregate amount of all amounts added back to net earnings (or loss) during such fiscal period pursuant to clauses (x) and (xi) below, shall not exceed twenty percent (20%) of EBITDA calculated before giving effect to such add-backs, (x) all accruals, payments and expenses (including rationalization, legal, tax, structuring and other fees, costs and expenses (including professional fees, costs and expenses) related thereto), or any amortization thereof, related to any Permitted Acquisitions (in each case, including any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed), provided, that the aggregate amount of all added back to net earnings (or loss) during such fiscal period pursuant to this clause (x), together with the aggregate amount of all amounts added back to net earnings (or loss) during such fiscal period pursuant to clauses (ix) above and (xi) above, shall not exceed twenty percent (20%) of EBITDA calculated before giving effect to such add-backs, and (xi) expenses incurred in connection with earn-outs and other deferred payments in connection with any Permitted Acquisition or other Permitted Investment (or any acquisition of any Person or assets made on or prior to the Closing Date), any contingent or deferred payments (including earn-outs, non-compete payments and other consulting payments) incurred in connection with any Permitted Acquisition or any Permitted Investment, and earn-out obligation expense (including adjustments thereto), in each case, to the extent paid, incurred or accrued during such period provided, that the aggregate amount of all added back to net earnings (or loss) during such fiscal period pursuant to this clause (xi), together with the aggregate amount of all amounts added back to net earnings (or loss) during such fiscal period pursuant to clauses (ix) and (x) above, shall not exceed twenty percent (20%) of EBITDA calculated before giving effect to such add-backs, in each case, determined on a consolidated basis in accordance with GAAP. For the purposes of calculating EBITDA for any period, (a) if, at any time during such period, Borrower or any of its Subsidiaries shall have made a Permitted Acquisition, EBITDA for such period shall be calculated after giving pro forma effect thereto (including pro forma adjustments arising out of events which are directly attributable to such Permitted Acquisition, are factually supportable, and are expected to have a continuing impact, in each case to be mutually and reasonably agreed upon by Borrower and Agent) as if any such Permitted Acquisition or adjustment occurred on the first day of such period).

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

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

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

"Eligible Accounts" means those Accounts created by Borrower in the ordinary course of its business, that arise out of Borrower's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit performed by Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits and unapplied cash. Eligible Accounts shall not include the following:

(a) Accounts (other than Seed Exchange Accounts) that the Account Debtor has failed to pay within 90 days of original invoice date, and Seed Exchange Accounts that the Account Debtor has failed to pay within 270 days of original invoice date,

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

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

(d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional,

(e) Accounts that are not payable in Dollars or Canadian dollars (it being understood and agreed that the portion of Seed Exchange Accounts payable in Dollars and not in kind shall not be excluded under this clause (e)),

(f) Accounts with respect to which the Account Debtor is the government of any foreign country or foreign sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (x) the Account is supported by an irrevocable letter of credit satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, or (y) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, satisfactory to Agent,

(g) **[Reserved.]**,

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

(i) Accounts with respect to an Account Debtor whose Eligible Accounts owing to Borrower exceed 10% (or with respect to (i) Wal-Mart Stores, Inc. and its subsidiaries and affiliates, 40%, (ii) Costco Wholesale Corporation, Whitewave Foods Company or Safeway, Inc. and their respective subsidiaries and affiliates, 15%, (iii) Frito-Lay North America, Inc., 25%, or (iv) Target Corporation and its subsidiaries and affiliates, 20%, each such percentage, as applied to a particular Account Debtor, being subject to reduction by Agent in its Permitted Discretion if

the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, however, that, in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(k) Accounts with respect to which the Account Debtor is located in a state or jurisdiction (e.g., New Jersey, Minnesota, and West Virginia) that requires, as a condition to access to the courts of such jurisdiction, that a creditor qualify to transact business, file a business activities report or other report or form, or take one or more other actions, unless Borrower has so qualified, filed such reports or forms, or taken such actions (and, in each case, paid any required fees or other charges), except to the extent that Borrower may qualify subsequently as a foreign entity authorized to transact business in such state or jurisdiction and gain access to such courts, without incurring any cost or penalty viewed by Agent to be significant in amount, and such later qualification cures any access to such courts to enforce payment of such Account,

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

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

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

(o) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by Borrower of the subject contract for goods or services.

"Eligible Inventory." means Inventory consisting of first quality raw materials and finished goods held for sale in the ordinary course of Borrower's business that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit or appraisal performed by Agent from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrower's historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if:

(a) Borrower does not have good, valid, and marketable title thereto,

(b) it is not located at one of the locations in the continental United States set forth on Schedule E-1 (or in-transit from one such location to another such location), as such schedule may be amended from time to time upon written notice to Agent,

(c) it is located on real property leased by Borrower or in a contract warehouse, in each case, unless, within 90 days after the Closing Date, it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises,

(d) it is not subject to a valid and perfected first priority Agent's Lien, subject only to Permitted Liens of the type described in clauses (b), (c) and (g) of the definition thereof,

(e) it consists of goods returned or rejected by Borrower's customers,

(f) it is Seed Inventory during any period other than February 1 through June 30 of any year,

(g) it consists of goods that are obsolete or slow moving, restrictive or custom items, work-in-process, or goods that constitute spare parts, shipping materials, supplies used or consumed in Borrower's business (in each case, other than Packaging Inventory), bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment, or

(h) it was acquired in connection with a Permitted Acquisition, until the completion of a field examination (and, if required by the Lenders, an appraisal; provided that no such appraisal shall be required in connection with the Orchard Valley Acquisition) of such Inventory, in each case, reasonably satisfactory to Agent (which field examination (and, if applicable, appraisal) may be conducted prior to the closing of such Permitted Acquisition).

"Eligible Transferee" means (a) a commercial bank organized under the laws of the United States, or any state thereof, and having total assets in excess of \$250,000,000, (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country and which has total assets in excess of \$250,000,000, provided that such bank is acting through a branch or agency located in the United States, (c) a finance company, insurance company, financial institution, or fund that is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having (together with its Affiliates) total assets in excess of \$250,000,000, (d) any Affiliate (other than individuals) of a Lender, (e) so long as no Event of Default has occurred and is continuing, any other Person approved by Agent and Borrower (which approval of Borrower shall not be unreasonably withheld, delayed, or conditioned), and (f) during the continuation of an Event of Default, any other Person approved by Agent.

"Environmental Actions" 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 from (a) any assets, properties, or businesses of Borrower, its Subsidiaries, 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 Borrower, its Subsidiaries, 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 Borrower 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, punitive damages, consequential damages, treble 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).

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

"ERISA Affiliate" means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower or its Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower or its Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which Borrower or any of its Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with Borrower or any of its Subsidiaries and whose employees are aggregated with the employees of Borrower or its Subsidiaries under IRC Section 414(o).

"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 7.

"Excess Availability" means, as of any date of determination, the amount equal to Availability.

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

"Excluded Account" means (i) payroll accounts, (ii) withholding, tax and employee benefit accounts, (iii) any escrow, trust or similar accounts, (iv) separate and distinct, non-commingled accounts and deposits held on behalf of customers and Account Debtors, (v) tax accounts (including, without limitation, sales tax accounts), (vi) any tax benefits, escrow accounts, fiduciary or trust accounts for the benefit of third parties, (vii) zero balance accounts, (ix) the Term Lender Collateral Account, and (x) other accounts with average monthly balances not in excess of \$500,000 in the aggregate for all such accounts, and in each case, any funds and other property held in or maintained in any such accounts.

"Excluded Collateral" has the meaning specified therefor in the Security Agreement.

"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, 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 each case 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 the Agreement or any other Loan Document); (ii) taxes resulting from a Lender's or a Participant's failure to comply with the requirements of Section 16(c) of the 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 the Agreement (or designates a new lending office), except that Taxes shall include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16(a) of the Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to the 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 the Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority, and (iv) any United States federal withholding taxes imposed under FATCA.

"Extension" has the meaning specified therefor in Section 2.16(a) of the Agreement.

"Extension Offer" has the meaning specified therefor in Section 2.16(a) of the Agreement.

"Extended Revolver Commitment" has the meaning specified therefor in Section 2.16(a) of the Agreement.

"Extending Revolver Lender" has the meaning specified therefor in Section 2.16(a) 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.

"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).

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

"Fee Letter" means that certain fifth amended and restated fee letter dated as of the Closing Date between Borrower and Agent, as the same may be amended, restated or otherwise modified from time to time.

"First Amendment Effective Date" means March 8, 2010.

"Fixed Charges" means, with respect to any fiscal period and with respect to Borrower determined on a consolidated basis in accordance with GAAP, the sum, without duplication, of (a) Interest Expense paid in cash during such period, (b) regularly scheduled principal payments of Indebtedness during such period, (c) earnout payments made during such period on Indebtedness permitted pursuant to Section 6.1(h), and (d) dividends, distributions, purchases, acquisitions, redemptions and retirements on or of its Stock to the extent paid in cash made during such period in accordance with Section 6.10 (excluding dividends, distributions, purchases, acquisitions, redemptions and retirements in an aggregate amount not to exceed \$40,000,000 made during the twelve month period ending on the last day of such period).

"Fixed Charge Coverage Ratio" means, with respect to Borrower for any period, the ratio of (i) EBITDA for such period, minus Capital Expenditures not financed with the proceeds of Indebtedness and made (to the extent not already incurred in a prior period) or incurred during such period, minus all federal, state, and local income taxes paid in cash during such period, plus, to the extent not already included in EBITDA, cash tax refunds and receipts for such period to (ii) Fixed Charges for such period.

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

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

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

"FSA" means the Food Security Act of 1985, as amended, or any successor statute thereto.

"FSA State" means Alabama, Colorado, Idaho, Louisiana, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Vermont, West Virginia, Wyoming and any other state of the United States of America that is certified after the date hereof to have a "central filing system" as defined in the FSA.

"Funded Indebtedness" means, as of any date of determination, all Indebtedness for borrowed money or letters of credit of Borrower, determined on a consolidated basis in accordance with GAAP, that by its terms matures more than one year after the date of calculation, and any such Indebtedness maturing within one year from such date that is renewable or extendable at the option of Borrower or its Subsidiaries, as applicable, to a date more than one year from such date, including, in any event, but without duplication, with respect to Borrower and its Subsidiaries, the Revolver Usage, the Term Loan, and the amount of their Capital Lease Obligations.

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

"Funding Losses" has the meaning specified therefor in Section 2.13(b)(ii).

"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 Accounts" means any Account with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrower has complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States.

"Governmental Authority" means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Grower Payable Reserve" means, as of any date of determination, the amount of reserves that Agent has established in respect of accounts payable of Borrower and its Subsidiaries then outstanding to growers or suppliers of agricultural products based upon the then most recently delivered information regarding accounts payable required to be delivered pursuant to Section 5.3.

"Growers' Lien Laws" means, collectively, state and federal laws of the United States of America applicable to Borrower's purchase of agricultural products on credit from any selling party that create a Lien or imposes a trust upon the agricultural products sold and/or the proceeds of such agricultural products for the benefit of such selling party or a creditor thereof to secure payment for such agricultural products.

"Guarantor" means each Person that becomes a guarantor after the Closing Date pursuant to Section 5.16 of the Agreement.

"Guaranty" means a general continuing guaranty in the form of Exhibit G-1 hereto.

"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 Loan Party and its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means any Bank Product Provider that is a party to a Hedge Agreement with a Loan Party or its Subsidiaries or otherwise provides Bank Products under clause (f) of the definition thereof; provided, that if, at any time, a Lender ceases to be a Lender under this Agreement (prior to the payment in full of the Obligations), then, from and after the date on which it ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Hedge Providers and the obligations with respect to Hedge Agreements entered into with such former Lender or any of its Affiliates shall no longer constitute Hedge Obligations.

"Holdout Lender" has the meaning specified therefor in Section 14.2(a).

"Immaterial Subsidiary" means each Subsidiary of a Loan Party that is not a Material Subsidiary (for the avoidance of doubt, JBSS Ventures, LLC shall constitute an Immaterial Subsidiary as of the Closing Date).

"Incremental Amendment" has the meaning specified therefor in Section 2.15.

"Indebtedness" means (a) all obligations for borrowed money, (b) all obligations 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 as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of a Person or its Subsidiaries, irrespective of whether such obligation or liability is assumed, (e) earnouts and all other obligations to pay the deferred purchase price of assets (other than (i) trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices and (ii) royalty payments payable in the ordinary course of business in respect of non-exclusive licenses in an aggregate amount not exceeding \$1,000,000), (f) all obligations owing under Hedge Agreements, and (g) any obligation 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 (f) 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.

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

"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.

"Intercompany Subordination Agreement" means a subordination agreement executed and delivered by Borrower, each of its Subsidiaries, and Agent, the form and substance of which is reasonably satisfactory to Agent.

"Interest Expense" means, for any period, the aggregate of the interest expense of Borrower for such period, determined on a consolidated basis in accordance with GAAP.

"Interest Period" means, with respect to any SOFR Loan, a period commencing on the date of the making of such SOFR Loan (or the continuation of a SOFR Loan or the conversion of a Base Rate Loan to a SOFR Loan) and ending 1, 3 or 6 months thereafter; provided, that (a) interest shall accrue at the applicable rate based upon Term SOFR from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 3 or 6 months after the date on which the Interest Period began, as applicable, (d) Borrowers may not elect an Interest Period which will end after the Maturity Date and (e) no tenor that has been removed from this definition pursuant to Section 2.13(d)(iii)(D) shall be available for specification in any SOFR Notice or conversion or continuation notice.

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

"Inventory Sublimit" has the meaning specified in the definition of "Borrowing Base" contained in this Schedule 1.1.

"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 arising in the ordinary course of business consistent with past practice), or acquisitions of Indebtedness, Stock, 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.

"IRB Documents" means the Trust Indenture dated as of June 1, 1987 between the Decatur County-Bainbridge Industrial Development Authority, as Issuer, and Trust Company Bank, as Trustee, and the other documents and instruments executed and delivered pursuant to, or in connection with, such Trust Indenture, as the same may be amended, restated or otherwise modified from time to time.

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

"ISP" means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by the Issuing Lender 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 Borrower in favor of Issuing Lender and relating to such Letter of Credit.

"Issuing Lender" means WFCF, Wells Fargo or any other Lender that, at the request of Borrower and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Lender for the purpose of issuing Letters of Credit pursuant to Section 2.12 of the Agreement, and Issuing Lender shall be a Lender or, if WFCF is the Issuing Lender, L/C Undertakings pursuant to Section 2.12 of the Agreement and Issuing Lender shall be a Lender.

"Latest Maturity Date" means, as of any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity of any Extended Revolver Commitment, in each case as extended in accordance with this Agreement from time to time. If no Extension has been consummated pursuant to Section 2.16 of this Agreement, the Latest Maturity Date is the Maturity Date.

"L/C" means a letter of credit (as that term is defined in the Code) issued by Issuing Lender.

"L/C Disbursement" means a payment made by the Issuing Lender pursuant to a Letter of Credit.

"L/C Margin" means, as of any date of determination, the following percentages *per annum*, based upon Average Margin Availability:

Level	Average Margin Availability	L/C Margin
I	<\$20,000,000	1.75%
II	≥\$20,000,000 but < \$30,000,000	1.50%
III	≥\$30,000,000	1.25%

The L/C Margin shall be adjusted in accordance with the foregoing on the first day of each calendar month.

"L/C Undertaking" has the meaning specified therefor in Section 2.12(a).

"Lender" and "Lenders" have the respective meanings set forth in the preamble to the Agreement, and shall include any other Person made a party to the Agreement in accordance with the provisions of Section 2.15 or 13.1.

"Lender Group" means, individually and collectively, each of the Lenders (including the Issuing Lender) and Agent.

"Lender Group Expenses" means all (a) out-of-pocket costs or expenses (including taxes, and insurance premiums) required to be paid by Borrower or its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group to the extent permitted by the terms of the Loan Documents, (b) out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with Borrower or its Subsidiaries under the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and UCC searches and including searches with the patent and trademark office or the copyright office, but

not including any internal overhead cost allocations by Agent), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement or the Fee Letter, including, but not limited to appraisals of the Borrower's Equipment), 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 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 Event of 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 5.5(c) of this Agreement, (h) Agent's and Lenders' reasonable, documented out-of-pocket costs and expenses (including reasonable and documented attorneys' fees and expenses) relative to third party claims or any other lawsuit or adverse proceeding paid or incurred, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with any Loan Party or any of its Subsidiaries, (i) Agent's reasonable and documented out-of-pocket 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 CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities), or amending, waiving, or modifying the Loan Documents, and (j) Agent's and each Lender's reasonable and documented out-of-pocket costs and expenses (including reasonable and documented attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning any Loan Party or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral.

"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 Lender or a letter of credit (as that term is defined in the Code) issued by Underlying Issuer, as the context requires.

"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 2.12(k) of the 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 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 Lender, 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 the 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 Lender or Underlying Issuer 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 2.12(e) on such date.

"Letter of Credit Fee" means the fee described in Section 2.6(b) of the Agreement.

"Letter of Credit Indemnified Costs" has the meaning specified therefor in Section 2.12(f) of the Agreement.

"Letter of Credit Related Person" has the meaning specified therefor in Section 2.12(f) of the Agreement.

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

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

"Lien" means any mortgage, deed of trust, 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.

"Limited Condition Acquisition" means any Acquisition by Borrower or one or more of its Subsidiaries permitted pursuant to the Loan Documents whose consummation (x) is not conditioned on the availability of, or on obtaining, third party financing, (y) is not a simultaneous sign-and-close transaction, and (z) occurs no later than the one hundred twentieth (120th) day following the date the agreement relating to such acquisition or investment is executed and delivered by the parties thereto.

"Liquidity" means, at any time of determination, the sum of (a) Availability at such time *plus* (b) the aggregate amount of Qualified Cash.

"Loan Account" has the meaning specified therefor in Section 2.10.

"Loan Documents" means the Agreement, any Borrowing Base Certificate, the Control Agreements, the Copyright Security Agreement, the Fee Letter, any Guaranty, any Intercompany Subordination Agreement, the Letters of Credit, the Patent Security Agreement, the Security Agreement, the Trademark Security Agreement, the Side Letter, any note or notes executed by Borrower in connection with the Agreement and payable to a member of the Lender Group, and any other agreement entered into, now or in the future, by Borrower or any of its Subsidiaries and the Lender Group in connection with the Agreement, as the same may be amended, restated or otherwise modified from time to time.

"Loan Party" means Borrower or any Guarantor.

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

"Material Adverse Change" means (a) a material adverse change in the business, operations, results of operations, assets, liabilities or financial condition of Borrower and its Subsidiaries, taken as a whole, (b) a material impairment of Borrower's and its Subsidiaries ability to perform their obligations under the Loan Documents to which they are parties or of the Lender Group's ability to enforce the Obligations or realize upon the Collateral, or (c) a material impairment of the enforceability or priority of the Agent's Liens with respect to the Collateral as a result of an action or failure to act on the part of Borrower or its Subsidiaries.

"Material Subsidiary" means (a) Borrower, and (b) each Subsidiary of a Loan Party that (i) as of the most recent month for which financial statements were required to be delivered pursuant to Section 5.3, owns at least 2.50% of the consolidated total assets of the Loan Parties and their Subsidiaries, (ii) as of the most recent month for which financial statements were required to be delivered pursuant to Section 5.3, generates at least 2.50% of the consolidated revenues of the Loan Parties and their Subsidiaries, (iii) is the owner of Equity Interests of any Subsidiary of a Loan Party that otherwise constitutes a Material Subsidiary, or (iv) any group comprising Subsidiaries of a Loan Party that each would not have been a Material Subsidiary under clauses (i), (ii), or (iii) but that, taken together as of the most recent month for which financial statements were required to be delivered pursuant to Section 5.3, had revenues or total assets in excess of 5% of the consolidated revenues or total assets, as applicable, of the Loan Parties and their Subsidiaries.

"Maturity Date" means March 5, 2025.

"Maximum Revolver Amount" means \$117,500,000, as such amount may be increased in accordance with Section 2.15.

"Maximum Revolver Amount Increase" has the meaning specified therefor in Section 2.15.

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

"Net Cash Proceeds" means, with respect to any sale or disposition by Borrower or any of its Subsidiaries of property or assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of Borrower or its Subsidiaries, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on any asset (other than (A) Indebtedness owing to Agent or any Lender under the Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition, (ii) reasonable fees, commissions, and expenses related thereto and required to be paid by Borrower or such Subsidiary in connection with such sale or disposition and (iii) taxes paid or payable to any taxing authorities by Borrower or such Subsidiary in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of Borrower or any of its Subsidiaries, and are properly attributable to such transaction; and

"Net Liquidation Percentage" means the percentage of the book value of Borrower's Inventory or Equipment, as the case may be, that is estimated to be recoverable in an orderly liquidation of such Inventory or Equipment, as the case may be, net of all associated costs and expenses of such liquidation, such percentage to be as determined from time to time by an appraisal company selected by Agent.

"Obligations" means (a) all loans, Advances, 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), contingent reimbursement obligations with respect to outstanding Letters of Credit, prepayment premiums, liabilities (including all amounts charged to Borrower's Loan Account pursuant to the Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), charges, costs, 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, covenants, and duties of any kind and description, in each case owing by Borrower to the Lender Group pursuant to or evidenced by the 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 Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, and (b) all Bank Product Obligations; provided that, anything to the contrary contained in the foregoing notwithstanding, the Obligations shall exclude any Excluded Swap Obligation. Without limiting the generality of the foregoing, the Obligations of Borrower under the Loan Documents include the obligation to pay (i) the principal of the Advances, (ii) interest accrued on the Advances, (iii) the amount necessary to reimburse Issuing Lender 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 under any Loan Document. Any reference in the 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.

"Orchard Valley Acquisition" means with an Acquisition of Orchard Valley Harvest, Inc. that constitutes a Permitted Acquisition.

"Original Closing Date" has the meaning specified therefor in the recitals to the Agreement.

"Original Credit Agreement" has the meaning specified therefor in the recitals to the Agreement.

"Original Obligations" means the "Obligations" as defined in the Original Credit Agreement.

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

"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" has the meaning specified therefor in Section 2.5.

"Packaging Inventory" means Eligible Inventory constituting corrugated boxes, jars, labels, cartons, film and shipping supplies used in the packaging of nuts and other food products sold by the Borrower.

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

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

"Payment Conditions" means, at the time of determination with respect to any applicable transaction, that:

- (a) no Event of Default shall exist or would result from the consummation of the relevant transaction; and
- (b) Liquidity (i) immediately preceding the date of such proposed payment and the consummation of the relevant transaction, calculated on a pro forma basis as if such proposed payment was made, and the relevant transaction was consummated, and (ii) immediately after giving effect to such proposed payment and the relevant transaction, in each case, is not less than \$20,000,000.

"Permitted Acquisition" means any Acquisition so long as:

- (a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition and the proposed Acquisition is consensual,
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(b) no Indebtedness will be incurred, assumed, or would exist with respect to Borrower or its Subsidiaries as a result of such Acquisition, other than Indebtedness permitted by Section 6.1 and no Liens will be incurred, assumed, or would exist with respect to the assets of Borrower or its Subsidiaries as a result of such Acquisition other than Permitted Liens,

(c) Borrower either (i) shall have Availability plus Qualified Cash in an amount equal to or greater than \$20,000,000 after giving effect to the consummation of the proposed Acquisition; provided, that, for purposes of this clause (c)(i), the calculation of Availability shall include Accounts and Inventory acquired by the Borrower pursuant to such Acquisition only to the extent that such Accounts and Inventory constitute Eligible Accounts and Eligible Inventory, respectively, or (ii) (A) shall have Availability plus Qualified Cash in an amount equal to or greater than \$15,000,000 after giving effect to the consummation of the proposed Acquisition; provided, that, for purposes of this clause (c)(ii), the calculation of Availability shall include Accounts and Inventory acquired by the Borrower pursuant to such Acquisition only to the extent that such Accounts and Inventory constitute Eligible Accounts and Eligible Inventory, respectively and (B) has provided Agent with written confirmation, supported by reasonably detailed calculations, that on a pro forma basis (including pro forma adjustments arising out of events which are directly attributable to such proposed Acquisition, are factually supportable, and are expected to have a continuing impact, in each case, determined as if the combination had been accomplished at the beginning of the relevant period; such eliminations and inclusions to be mutually and reasonably agreed upon by Borrower and Agent) created by adding the historical combined financial statements of Borrower (including the combined financial statements of any other Person or assets that were the subject of a prior Permitted Acquisition during the relevant period) to the historical consolidated financial statements of the Person to be acquired (or the historical financial statements related to the assets to be acquired) pursuant to the proposed Acquisition, the Fixed Charge Coverage Ratio of Borrower and its Subsidiaries is equal to or greater than 1.00:1.00 for the four (4) fiscal quarter period reflected in the Compliance Certificate most recently delivered to Agent pursuant to this Agreement prior to the consummation of the Proposed Acquisition (calculated as if such Acquisition and all Loans funded in connection therewith had been made on the first day of such period),

(d) with respect to any Acquisition involving aggregate consideration of \$5,000,000 or greater, Borrower has provided Agent with such due diligence information as reasonably requested by Agent, including, without limitation, forecasted balance sheets, profit and loss statements, and cash flow statements of the Person or assets to be acquired for the remainder of the fiscal year in which the proposed Acquisition is consummated for such Person or related to such assets, all prepared on a basis consistent with such Person's (or assets') historical financial statements, together with appropriate supporting details and a statement of underlying assumptions, on a quarter by quarter basis, in form and substance (including as to scope and underlying assumptions) reasonably satisfactory to Agent,

(e) **[Intentionally Omitted]**,

(f) with respect to any Acquisition involving aggregate consideration of \$5,000,000 or greater, Borrower has provided Agent with written notice of the proposed Acquisition at least 15 Business Days (or such shorter period as may be acceptable to Agent) prior to the anticipated closing date of the proposed Acquisition and, not later than 5 Business Days (or such shorter period as may be acceptable to Agent) prior to the anticipated closing date of the proposed Acquisition, copies of the acquisition agreement and other material documents relative

to the proposed Acquisition, which agreement and documents must be reasonably acceptable to Agent,

(g) the assets being acquired (other than a *de minimis* amount of assets in relation to Borrower's and its Subsidiaries' total assets), or the Person whose Stock is being acquired, are useful in or engaged in, as applicable, the business of Borrower and its Subsidiaries or are otherwise in compliance with Section 6.6,

(h) the assets being acquired (other than a *de minimis* amount of assets in relation to Borrower's and its Subsidiaries' total assets) are located within the United States or Canada or the Person whose Stock is being acquired is organized in a jurisdiction located within the United States or Canada, and

(i) the subject assets or Stock, as applicable, are being acquired directly by Borrower or one of its Subsidiaries, and, in connection therewith, Borrower or the applicable Subsidiary shall have complied with Section 5.16 or 5.17, as applicable, of the Agreement.

"Permitted Discretion" means Agent's good faith 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 assets that are substantially worn, damaged or obsolete or no longer used or useful in the ordinary course of business and leases and subleases of real property not useful in the conduct of the business of Borrower and its 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 the 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 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 in the ordinary course of business;

(j) (i) the lapse of registered patents, trademarks, copyrights and other intellectual property to the extent not economically desirable in the conduct of its business, and (ii) the

abandonment of patents, trademarks, copyrights or other intellectual property rights in the ordinary course of business;

(k) the making of Distributions that are permitted to be made pursuant to this Agreement;

(l) the making of Investments that are permitted to be made pursuant to this Agreement;

(m) (i) transfers of assets (A) from any Loan Party or any Subsidiary of Borrower to a Loan Party and (B) from any Subsidiary of Borrower that is not a Loan Party to any other Subsidiary of Borrower, and (ii) the surrender or waiver of contractual rights or settlement, release or surrender of any contract, tort or other litigation claims in the ordinary course of business;

(n) dispositions of assets acquired by Borrower and/or its Subsidiaries pursuant to a Permitted Acquisition consummated within twelve (12) months of the date of the proposed Disposition (the "Subject Permitted Acquisition") so long as (i) the consideration received for the assets to be so disposed is at least equal to the fair market value thereof, (ii) the assets to be so disposed are not necessary or economically desirable in connection with the business of Borrower and its Subsidiaries, and (iii) the assets to be so disposed are readily identifiable as assets acquired pursuant to the Subject Permitted Acquisition; and

(o) sales or other dispositions of Collateral of Borrower not to exceed \$2,500,000 in the aggregate in any calendar year.

"Permitted Holders" means the Persons identified on Schedule P-1.

"Permitted Intercompany Advances" means loans or advances made by (a) Borrower to another Loan Party or (b) a Guarantor to another Loan Party so long as, with respect to loans and advances described in clauses (a) and (b), such intercompany Indebtedness, if requested by Agent, is evidenced by a subordinated demand note in form and substance reasonably satisfactory to Agent and, if requested by Agent, pledged and delivered to Agent pursuant to the Security Agreement as additional Collateral for the Obligations.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents;

(b) Investments in negotiable instruments for collection;

(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 Borrower or any of its Subsidiaries effected in the ordinary course of business or owing to 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 Borrower or its Subsidiaries;

(e) Permitted Acquisitions;

(f) Investments held by a Person acquired in a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence on the date of such Permitted Acquisition;

(g) guarantees permitted by Section 6.1;

(h) Permitted Intercompany Advances;

(i) equity interests and other Securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to Borrower 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;

(j) deposits of cash made in the ordinary course of business to secure performance of operating leases or in connection with asset purchases;

(k) (i) non-cash loans and advances to employees, officers and directors of Borrower or any of its Subsidiaries for the purpose of purchasing equity interests in Borrower so long as the proceeds are used solely to purchase such equity interests in Borrower, and (ii) loans and advances to employees and officers of Borrower or any of its Subsidiaries in the ordinary course of business for any other business purpose and in an aggregate outstanding principal amount not to exceed \$1,000,000 at any one time;

(l) Investments in the form of capital contributions and the acquisition of Equity Interests made by any Loan Party in any other Loan Party (other than capital contributions to or the acquisition of Equity Interests of Borrower);

(m) Investments resulting from entering into (i) Bank Product Agreements, (ii) agreements relating to obligations permitted under Section 6.1(h) or (iii) trade credit extended to customers in the ordinary course of business;

(n) equity investments by any Loan Party in any Subsidiary of such Loan Party which is required by Law to maintain a minimum net capital requirement or as may be otherwise required by applicable Law;

(o) Investments consisting of non-cash consideration received in connection with Permitted Dispositions or other sales or dispositions of assets (not constituting Collateral), so long as the non-cash consideration received does not exceed twenty-five percent (25%) of the total consideration (or, in the case of sales or dispositions of assets not constituting Collateral, fifty percent (50%) of the total consideration) received in connection with such transaction; and

(p) other Investments so long as the Payment Conditions are satisfied at the time such Investment is made.

"Permitted Liens" means:

(a) Liens held by 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 the Agent's Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests;

(c) judgment Liens that do not constitute an Event of Default under Section 7.7;

(d) Liens set forth on Schedule P-2, provided that any such Lien only secures the Indebtedness that it secures on the Closing Date and any Refinancing Indebtedness in respect thereof;

(e) the interests of lessors under operating leases;

(f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Purchase Money Indebtedness and Capital Lease Obligations and so long as (i) such Lien attaches only to the assets purchased, acquired, leased, constructed, repaired, improved or installed (and accessions, replacements or additions thereto and improvements thereon) and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to finance the purchase, acquisition, lease, construction, repair, improvement or installation of such assets 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 ("Subject Third Parties"), 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;

(i) Liens on amounts deposited in connection with obtaining worker's compensation or other unemployment insurance;

(j) Liens on amounts deposited in connection with the making or entering into of bids, tenders, or leases in the ordinary course of business and not in connection with the borrowing of money;

(k) Liens on amounts deposited as security for surety or appeal bonds in connection with obtaining such bonds in the ordinary course of business;

(l) easements, rights-of-way, statutory restrictions, reservations, covenants, zoning and other land use regulations, title exceptions or encumbrances affecting real property owned or leased by Borrower or any of its Subsidiaries, provided that such exceptions do not in the aggregate interfere with the use of such property in the ordinary course of business, except for such interference as could not reasonably be expected to result in a Material Adverse Change;

(m) Liens of lessees of Real Property owned by Borrower or any Subsidiary of Borrower;

(n) Liens on Deposit Accounts granted or arising in the ordinary course of business in favor of depository banks maintaining such Deposit Accounts solely to the extent they secure customary account fees and charges payable in respect of such Deposit Accounts and overdrafts;

(o) Liens on the Term Lender Collateral Account and Liens arising under the Term Loan Documents;

(p) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition;

(q) Liens on property that is the subject of a Permitted Disposition;

(r) Liens in connection with any zoning, building or similar Law or right reserved to or vested in any Governmental Authority to control or regulate the use of any or dimensions of real property or the structure thereon, including Liens in connection with any condemnation or eminent domain proceeding or compulsory purchase order;

(s) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(t) Liens securing obligations (including in respect of Banking Services) of the type described in Section 6.1(e) and Hedging Obligations and other Third Party Derivative Obligations of the type described in Section 6.1(h); and

(u) additional Liens on assets other than Accounts and Inventory securing aggregate obligations not in excess of \$2,500,000 at any time outstanding.

"Permitted Protest" means the right of Borrower or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes), or rental payment; provided that (a) a reserve with respect to such obligation is established on Borrower's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Borrower or its Subsidiary, as applicable, in good faith, (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 the Agent's Liens and, (d) in respect of tax liens, Agent shall, in its Permitted Discretion, be entitled to institute a reserve in accordance with Section 2.1(b) in an amount equal to the amount of such tax lien.

"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.

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

"Project Wild" means the transaction separately identified by Borrower to Agent in March 2019.

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

(a) with respect to a Lender's obligation to make Advances and right to receive payments of principal, interest, fees, costs, and expenses with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (y) such Lender's Revolver Commitment, by (z) the aggregate Revolver Commitments of all

Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (y) the outstanding principal amount of such Lender's Advances by (z) the outstanding principal amount of all Advances,

(b) with respect to a Lender's obligation to participate in Letters of Credit, to reimburse the Issuing Lender, and right to receive payments of fees with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (y) such Lender's Revolver Commitment, by (z) the aggregate Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (y) the outstanding principal amount of such Lender's Advances by (z) the outstanding principal amount of all Advances,

(c) [**Reserved**], and

(d) with respect to all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7), the percentage obtained by dividing (i) such Lender's Revolver Commitment, by (ii) the aggregate amount of Revolver Commitments of all Lenders; provided, however, that in the event the Revolver Commitments have been terminated or reduced to zero, Pro Rata Share under this clause shall be the percentage obtained by dividing (A) the outstanding principal amount of such Lender's Advances plus such Lender's ratable portion of the Risk Participation Liability with respect to outstanding Letters of Credit, by (B) the outstanding principal amount of all Advances plus the aggregate amount of the Risk Participation Liability with respect to outstanding Letters of Credit.

"Protected Vendor" means any Person that is afforded the benefit of any Lien or trust upon agricultural products sold to Borrower and/or its Subsidiaries and/or any proceeds of such agricultural products under any Growers' Lien Law.

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

"Purchase Money Indebtedness" means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations) incurred at the time of or within ninety (90) days prior to or after the acquisition, lease, completion of construction, repair of, replacement, improvement to or installation of assets for the purpose of financing all or any part of the acquisition, leasing, construction, repair, replacement, improvement or installation of such assets.

"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 17.14 of the Agreement.

"Qualified Cash" means, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of Borrower and its 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 Stock" means and refers to any Stock issued by Borrower (and not by one or more of its Subsidiaries) that is not a Disqualified Stock.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by Borrower or 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.

"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, (b) such refinancings, renewals, or extensions do not result in an increase in the interest rate with respect to the Indebtedness so refinanced, renewed, or extended, (c) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are materially more burdensome or restrictive to Borrower, (d) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of 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, and (e) 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.

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

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

"Replacement Lender" has the meaning specified therefor in Section 14.2(a).

"Report" has the meaning specified therefor in Section 15.16.

"Required Lenders" means, at any time, Lenders whose aggregate Pro Rata Shares (calculated under clause (d) of the definition of Pro Rata Shares) exceed 50%; provided, however, at any time there are fewer than four (4) Lenders, Required Lenders shall constitute no fewer than two (2) Lenders, it being understood that, for purposes of this proviso, a Lender and all of its Affiliates that are Lenders shall constitute but one (1) Lender.

"Reserve Percentage" means, on any day, for any Lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System (or any successor

Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities") of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

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

"Responsible Officer" means each of the chief executive officer, president, chief financial officer, vice president of finance, principal accounting officer, treasurer, assistant treasurer, general counsel and assistant general counsel and each other similar officer of Borrower.

"Revolver Commitment" means, with respect to each Lender, its Revolver Commitment, and, with respect to all Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or in the Assignment and Acceptance pursuant to which such Lender became a Lender hereunder, 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.

"Revolver Commitment Increase Lender" has the meaning specified therefor in Section 2.15.

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

"Risk Participation Liability" means, as to each Letter of Credit, all reimbursement obligations of Borrower to the Issuing Lender with respect to an L/C Undertaking, consisting of (a) the amount available to be drawn or which may become available to be drawn, (b) all amounts that have been paid by the Issuing Lender to the Underlying Issuer to the extent not reimbursed by Borrower, whether by the making of an Advance or otherwise, and (c) all accrued and unpaid interest, fees, and expenses payable with respect thereto.

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

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

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

"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.

"Security Agreement" means that certain Security Agreement dated as of February 7, 2008, as amended by that certain First Amendment to Security Agreement dated as of September 30, 2014, by and between Borrower and Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Seed Exchange Accounts" means Eligible Accounts owing from growers in respect of peanut seeds supplied pursuant to Borrower's seed exchange program.

"Seed Inventory" means Eligible Inventory consisting of peanut seeds held for sale or exchange in connection with the Borrower's seed exchange program with growers.

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

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

"Side Letter" means that certain Side Letter executed by Agent and Lenders in favor of Borrower dated the Original Closing Date.

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

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

"SOFR Deadline" has the meaning specified therefor in Section 2.13(b)(i) of the Agreement.

"SOFR Loan" means each portion of an Advance that bears interest at a rate determined by reference to Term SOFR (other than pursuant to clause (c) of the definition of "Base Rate").

"SOFR Margin" means, as of any date of determination, the following percentages per annum, based upon Average Margin Availability:

Level	Average Margin Availability	SOFR Margin
I	<\$20,000,000	1.85%
II	≥\$20,000,000 but < \$30,000,000	1.60%
III	≥\$30,000,000	1.35%

The SOFR Margin shall be adjusted in accordance with the foregoing on the first day of each calendar month.

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

"SOFR Option" has the meaning specified therefor in Section 2.13(a) of the Agreement.

"Solvent" means, with respect to any Person on a particular date, that, at fair valuations, the sum of such Person's assets is greater than all of such Person's debts.

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

"Specified Representations" means the representations and warranties set forth in Sections 4.8(a), 4.9(a), 4.9(b)(i), (ii) and (iii), 4.9(c), 4.9(d), 4.9(e) (solely as to perfection (solely insofar as perfection may be achieved by the filing of Uniform Commercial Code financing statements, recordation of intellectual property security agreements for registered intellectual property, or delivery of Equity Interest certificates and undated powers for Equity Interests) and priority), 4.9(f), 4.9(g)(i), (ii) and (iii), 4.9(h), 4.9(i), 4.12(a), 4.21, 4.22, and 4.24 of the Agreement.

"Standard Letter of Credit Practice" means, for Issuing Lender, any domestic or foreign law or letter of credit practices applicable in the city in which Issuing Lender 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.

"Stock" means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, 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).

"Subordinated Indebtedness" means any Indebtedness of Borrower or its Subsidiaries incurred from time to time that is subordinated in right of payment to the Obligations on terms and conditions of subordination reasonably 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 shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

"Supermajority Lenders" means, at any time, Lenders whose aggregate Pro Rata Shares (calculated under clause (d) of the definition of Pro Rata Shares) exceed 66 2/3%.

"Supported QFC" has the meaning specified therefor in Section 17.14 of this Agreement.

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

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

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

"Taxes" has the meaning specified therefor in Section 16(a).

"Term Lender" means Transamerica Life Insurance Company, an Iowa corporation, and its successors and assigns under the Term Loan Documents.

"Term Lender Collateral Account" means, collectively, the Deposit Account and/or Securities Account of the Borrower that have been pledged to the Term Lender and into which proceeds of the Excluded Collateral shall be deposited by the Borrower as and when required pursuant to the terms of the Term Loan Documents.

"Term Loan" means, collectively, (a) the term loans made to Borrower pursuant to the Term Loan Agreement on February 7, 2008 in an aggregate outstanding principal amount not to exceed \$45,000,000 and (b) additional term loans made to the Borrower pursuant to the Term Loan Agreement on or after the First Amendment Effective Date in an aggregate principal amount not to exceed \$20,000,000.

"Term Loan Agreement" means that certain Loan Agreement among Borrower, the Term Lender and JBSS Properties, LLC, a Delaware limited liability company, dated as of February 7, 2008, as the same may be amended, restated or otherwise modified from time to time.

"Term Loan Documents" means the Term Loan Agreement and the other documents and instruments executed pursuant thereto or in accordance therewith, in each case as the same may be amended, restated or otherwise modified from time to time.

"Term SOFR" means,

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

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

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

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

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

"Third Party Derivative Obligations" means obligations of Borrower and its Subsidiaries under any forward contract, futures contract, exchange contract, swap, option, equity derivative transaction or other financing agreement or arrangement (including, without limitation, caps, floors, collars and similar agreements), the value of which is dependent upon interest rates, currency exchange rates, equity, commodities or other indices, any which of the foregoing products are provided by a Person other than a Hedge Provider.

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

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

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

"Underlying Issuer" means a third Person which is the beneficiary of an L/C Undertaking and which has issued a letter of credit at the request of the Issuing Lender for the benefit of Borrower.

"Underlying Letter of Credit" means a letter of credit that has been issued by an Underlying Issuer.

"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" means the United States of America.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.3(a), 2.3(c) and 2.13(b), in each case, such day is also a Business Day.

"U.S. Special Resolution Regimes" has the meaning specified therefor in Section 17.14 of this Agreement.

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

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

"WFF" means Wells Fargo Capital Finance, LLC, a Delaware limited liability company.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b)

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

Subsidiaries of John B. Sanfilippo & Son, Inc.

Entity	Voting Securities Owned Directly or Indirectly by the Registrant	State or Country of Organization
JBSS Ventures, LLC	100%	Illinois

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-199637) of John B. Sanfilippo & Son, Inc. of our report dated August 23, 2023 relating to the consolidated financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
Chicago, Illinois
August 23, 2023

CERTIFICATION

I, Jeffrey T. Sanfilippo, certify that:

1. I have reviewed this Annual Report on Form 10-K of John B. Sanfilippo & Son, Inc. for the fiscal year ended June 29, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 23, 2023

/s/ Jeffrey T. Sanfilippo

Jeffrey T. Sanfilippo
Chairman of the Board and
Chief Executive Officer

CERTIFICATION

I, Frank S. Pellegrino, certify that:

1. I have reviewed this Annual Report on Form 10-K of John B. Sanfilippo & Son, Inc. for the fiscal year ended June 29, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 23, 2023

/s/ Frank S. Pellegrino

Frank S. Pellegrino
Chief Financial Officer, Executive Vice
President, Finance and Administration

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of John B. Sanfilippo & Son, Inc. (the "Company") on Form 10-K for the fiscal year ended June 29, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jeffrey T. Sanfilippo, Chief Executive Officer and Chairman of the Board, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that based on my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 23, 2023

/s/ Jeffrey T. Sanfilippo

Jeffrey T. Sanfilippo
Chief Executive Officer and Chairman of the Board

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of John B. Sanfilippo & Son, Inc. (the "Company") on Form 10-K for the fiscal year ended June 29, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Frank S. Pellegrino, Chief Financial Officer, Executive Vice President, Finance and Administration, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that based on my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 23, 2023

/s/ Frank S. Pellegrino

Frank S. Pellegrino
Chief Financial Officer, Executive Vice
President, Finance and Administration
