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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2017

OR

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

Commission File Number: 001-36729



FRESHPET, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

400 Plaza Drive, 1st Floor, Secaucus, New Jersey

(Address of principal executive offices)

20-1884894

(I.R.S. Employer
Identification No.)

07094

(Zip Code)

Registrant's telephone number, including area code: (201) 520-4000

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 type="checkbox"/> | Accelerated filer | <input checked="" type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> (Do not check if a small reporting company) | Smaller reporting company | <input type="checkbox"/> |
| Emerging growth company | <input checked="" 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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of November 3, 2017, the registrant had 34,861,198 shares of common stock, \$0.001 par value per share, outstanding.

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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

FRESHPET, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(Unaudited)

| | September 30, 2017 | December 31, 2016 |
|---|-------------------------------|------------------------------|
| ASSETS | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | \$ 2,069,344 | \$ 3,908,177 |
| Accounts receivable, net of allowance for doubtful accounts | 12,390,110 | 8,886,790 |
| Inventories, net | 8,690,803 | 5,402,735 |
| Prepaid expenses | 598,499 | 741,091 |
| Other current assets | 876,792 | 304,560 |
| Total Current Assets | <u>24,625,549</u> | <u>19,243,353</u> |
| Property, plant and equipment, net | 101,422,104 | 101,493,080 |
| Deposits on equipment | 4,057,627 | 3,620,444 |
| Other assets | 2,021,805 | 2,094,339 |
| Total Assets | <u>\$ 132,127,085</u> | <u>\$ 126,451,216</u> |
| LIABILITIES AND STOCKHOLDERS' EQUITY | | |
| CURRENT LIABILITIES: | | |
| Accounts payable | 8,231,738 | 6,884,155 |
| Accrued expenses | 6,660,234 | 4,531,139 |
| Accrued warrants | — | 253,391 |
| Borrowings under Credit Facilities | 5,500,000 | 7,000,000 |
| Total Current Liabilities | <u>\$ 20,391,972</u> | <u>\$ 18,668,685</u> |
| Other liabilities | 236,878 | — |
| Total Liabilities | <u>\$ 20,628,850</u> | <u>\$ 18,668,685</u> |
| STOCKHOLDERS' EQUITY: | | |
| Common stock — voting, \$0.001 par value, 200,000,000 shares authorized, 34,835,698 and 33,961,650 issued and outstanding on September 30, 2017 and December 31, 2016, respectively | 34,835 | 33,961 |
| Additional paid-in capital | 308,969,771 | 299,477,706 |
| Accumulated deficit | (197,506,371) | (191,729,136) |
| Total Stockholders' Equity | <u>111,498,235</u> | <u>107,782,531</u> |
| Total Liabilities and Stockholders' Equity | <u>\$ 132,127,085</u> | <u>\$ 126,451,216</u> |

See accompanying notes to the unaudited consolidated financial statements.

FRESHPET, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS)/INCOME
(Unaudited)

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|--|---|---------------|--|----------------|
| | 2017 | 2016 | 2017 | 2016 |
| NET SALES | \$ 41,199,780 | \$ 34,536,151 | \$ 115,682,698 | \$ 98,992,060 |
| COST OF GOODS SOLD | 21,697,051 | 19,185,274 | 62,206,855 | 53,841,492 |
| GROSS PROFIT | 19,502,729 | 15,350,877 | 53,475,843 | 45,150,568 |
| SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES | 19,303,705 | 14,542,680 | 57,844,411 | 48,916,509 |
| (LOSS)/INCOME FROM OPERATIONS | 199,024 | 808,197 | (4,368,568) | (3,765,941) |
| OTHER INCOME/(EXPENSES): | | | | |
| Other Income/(Expenses), net | 41,435 | 41,601 | (515,473) | (93,036) |
| Interest Expense | (465,253) | (214,067) | (830,932) | (490,097) |
| | (423,818) | (172,466) | (1,346,405) | (583,133) |
| (LOSS)/INCOME BEFORE INCOME TAXES | (224,794) | 635,731 | (5,714,973) | (4,349,074) |
| INCOME TAX EXPENSE | 20,754 | 15,000 | 62,261 | 45,000 |
| NET (LOSS)/INCOME | (245,548) | 620,731 | (5,777,234) | (4,394,074) |
| NET (LOSS)/INCOME ATTRIBUTABLE TO COMMON STOCKHOLDERS | \$ (245,548) | \$ 620,731 | \$ (5,777,234) | \$ (4,394,074) |
| NET (LOSS)/INCOME PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS | | | | |
| -BASIC | \$ (0.01) | \$ 0.02 | \$ (0.17) | \$ (0.13) |
| -DILUTED | \$ (0.01) | \$ 0.02 | \$ (0.17) | \$ (0.13) |
| WEIGHTED AVERAGE SHARES OF COMMON STOCK OUTSTANDING USED IN COMPUTING NET LOSS PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS | | | | |
| -BASIC | 34,666,180 | 33,717,676 | 34,316,161 | 33,603,535 |
| -DILUTED | 34,666,180 | 34,171,036 | 34,316,161 | 33,603,535 |

See accompanying notes to the unaudited consolidated financial statements.

FRESHPET, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

| | For the Nine Months Ended September 30, | |
|---|--|---------------------|
| | 2017 | 2016 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net loss | \$ (5,777,234) | \$ (4,394,074) |
| Adjustments to reconcile net loss to net cash flows provided by operating activities: | | |
| Provision for loss/(gains) on accounts receivable | 30,953 | (7,147) |
| Loss on disposal of equipment and deposits on equipment | 97,692 | 169,797 |
| Share-based compensation | 3,292,362 | 3,459,094 |
| Fair value adjustment for outstanding warrants | 334,628 | (19,007) |
| Change in reserve for inventory obsolescence | 315,006 | 113,581 |
| Depreciation and amortization | 9,411,173 | 6,958,113 |
| Amortization of deferred financing costs and loan discount | 398,648 | 109,678 |
| Changes in operating assets and liabilities | | |
| Accounts receivable | (3,534,273) | (1,631,493) |
| Inventories | (3,603,074) | 419,060 |
| Prepaid expenses and other current assets | (347,876) | (550,392) |
| Other assets | (162,488) | (324,893) |
| Accounts payable | 2,307,943 | 571,388 |
| Accrued expenses | 2,129,095 | 2,445,710 |
| Other liabilities | 236,878 | — |
| Net cash flows provided by operating activities | <u>5,129,433</u> | <u>7,319,415</u> |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Proceeds from maturities of short-term investments | — | 3,250,000 |
| Acquisitions of property, plant and equipment, software and deposits on equipment | (10,835,532) | (26,083,581) |
| Net cash flows used in investing activities | <u>(10,835,532)</u> | <u>(22,833,581)</u> |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Debt issuance costs | (245,291) | — |
| Exercise of options to purchase common stock | 5,612,557 | 1,981,066 |
| Proceeds from borrowings under Credit Facilities | 7,500,000 | 10,000,000 |
| Repayment of borrowings under Credit Facilities | (9,000,000) | (1,000,000) |
| Net cash flows provided by financing activities | <u>3,867,266</u> | <u>10,981,066</u> |
| NET CHANGE IN CASH AND CASH EQUIVALENTS | (1,838,833) | (4,533,100) |
| CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR | 3,908,177 | 8,029,413 |
| CASH AND CASH EQUIVALENTS, END OF PERIOD | <u>\$ 2,069,344</u> | <u>\$ 3,496,313</u> |
| SUPPLEMENTAL CASH FLOW INFORMATION: | | |
| Interest paid | \$ 489,738 | \$ 363,991 |
| NON-CASH INVESTING AND FINANCING ACTIVITIES: | | |
| Property, plant and equipment purchases in accounts payable | \$ 497,209 | \$ 472,362 |
| Conversion of warrants to common stock | \$ 588,019 | \$ — |

See accompanying notes to the unaudited consolidated financial statements.

FRESHPET, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

Note 1 – Nature of the Business and Summary of Significant Accounting Policies:

Nature of the Business – Freshpet, Inc. (hereafter referred to as “Freshpet” or the “Company”), a Delaware corporation, manufactures and markets natural fresh meals and treats for dogs and cats. The Company’s products are distributed throughout the United States and other international markets into major retail classes including Grocery and Mass (which includes internet and club) as well as Pet Specialty and Natural retail.

Principles of Consolidation – The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. (“U.S. GAAP”). The financial statements include the accounts of the Company as well as the Company’s wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

Basis of Presentation – The accompanying consolidated balance sheet as of September 30, 2017, statements of operations and comprehensive (loss) income for the three and nine months ended September 30, 2017 and 2016, and statements of cash flows for the nine months ended September 30, 2017 and 2016 are unaudited. The interim unaudited financial statements have been prepared on the same basis as the annual audited financial statements and in accordance with the rules and regulations of the United States Securities and Exchange Commission. In the opinion of management, the interim unaudited financial statements reflect all adjustments, which include only normal recurring adjustments, necessary for the fair statement of the Company’s financial position as of September 30, 2017, the results of its operations for the three and nine months ended September 30, 2017 and 2016, and its cash flows for the nine months ended September 30, 2017 and 2016. The financial data and other information disclosed in these notes related to the three and nine months ended September 30, 2017 and 2016 are unaudited. The results for three and nine months ended September 30, 2017 are not necessarily indicative of results to be expected for the year ending December 31, 2017, or any other interim periods, or any future year or period.

These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes in Item 8 of Part II, “Financial Statements and Supplementary Data,” of our Annual Report on Form 10-K for the year ended December 31, 2016.

Estimates and Uncertainties – The preparation of financial statements in conformity with U.S. 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. Actual results, as determined at a later date, could differ from those estimates.

Foreign Currency Contracts – The Company may enter into forward exchange contracts to reduce the Company’s exposure to foreign currency fluctuations of certain assets and liabilities denominated in foreign currencies. The foreign currency forward contracts have not been designated as hedges and, accordingly, any changes in their fair value are recognized on the Consolidated Statements of Operations and Comprehensive Loss in Other income/(expenses), net, and carried at their fair value in the Consolidated Balance Sheet with assets reported in Prepaid expenses and other current assets and liabilities reported in Accrued expenses.

As of September 30, 2017, the notional value of foreign currency forward contracts outstanding was 0.7 million pounds sterling. The fair value of the foreign currency forward contracts are measured using Level 2 inputs in the fair value hierarchy because they are determined based on a market approach utilizing externally quoted forward rates for similar contracts. For the three months and nine months ended September 30, 2017 the net loss recognized on forward contracts was less than \$0.1 million.

Reclassifications – Certain prior period amounts were reclassified to conform to the current year’s presentation.

Note 2 – Recently Issued Accounting Standards:

Not Yet Adopted

FRESHPET, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

In May 2014, the Financial Accounting Standard Board (“FASB”) issued ASU No. 2014-09, “Revenue from Contracts with Customers,” which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The ASU will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. In connection with this ASU, the FASB also issued ASU No. 2016-10 regarding identification of performance obligations and licensing considerations, ASU No. 2016-12 regarding narrow scope improvements and practical expedients- and ASU No. 2016-08 which clarifies the implementation of guidance on principal versus agent considerations. In August 2015, the FASB deferred the effective date of ASU No. 2014-09 to fiscal years beginning after December 15, 2017, with early adoption permitted only for fiscal years beginning after December 15, 2016. The standard permits the use of either the retrospective or cumulative effect transition method.

The Company is currently utilizing a comprehensive approach to assess the impact of this guidance by reviewing current accounting policies to identify the potential impact of the new requirements on its revenue contracts. The Company does not currently expect this guidance to have a material impact on its consolidated financial statements. The new standard will be effective as of January 1, 2018. The Company currently anticipates adopting Topic 606 using the modified retrospective transition approach that may result in a cumulative adjustment to beginning retained earnings as of January 1, 2018. Based on the Company’s analysis to date, the Company expects the new standard will require accelerated recognition of trade promotions and customer incentives. These transactions are currently recognized at the later of the sale of goods or agreement, however under the new standard the Company will estimate incentives to be offered to customers as part of the sales price. The Company does not expect the change to be material.

In February 2016, the FASB issued ASU No. 2016-02, “Leases,” which requires lessees to recognize the assets and liabilities that arise from leases on the balance sheet. A lessee should recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. The new guidance is effective for financial statements issued for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. The amendments should be applied at the beginning of the earliest period presented using a modified retrospective approach with earlier application permitted as of the beginning of an interim or annual reporting period. The Company is assessing the impact of ASU No. 2016-02 on its corporate office lease, and upon adoption of this guidance, expects to record the lease on its consolidated balance sheet in accordance with ASU No. 2016-02.

Note 3 – Inventories:

| | September 30, 2017 | December 31, 2016 |
|-----------------------------------|---------------------------|--------------------------|
| Raw Materials and Work in Process | \$ 2,031,997 | \$ 1,568,789 |
| Packaging Components Material | 834,189 | 908,771 |
| Finished Goods | 6,116,330 | 3,219,634 |
| | 8,982,516 | 5,697,194 |
| Reserve for Obsolete Inventory | (291,713) | (294,459) |
| | <u>\$ 8,690,803</u> | <u>\$ 5,402,735</u> |

FRESHPET, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

Note 4 – Property, Plant and Equipment:

Property, plant and equipment, net are summarized as follows:

| | September 30, 2017 | December 31, 2016 |
|---|---------------------------|--------------------------|
| Refrigeration Equipment | \$ 68,903,218 | \$ 62,603,188 |
| Machinery and Equipment | 46,444,727 | 45,953,884 |
| Building, Land, and Improvements | 25,162,046 | 25,114,611 |
| Furniture and Office Equipment | 4,228,574 | 3,941,995 |
| Automotive Equipment | 319,496 | 317,615 |
| Leasehold Improvements | 360,505 | 297,681 |
| Construction in Progress | 4,740,444 | 2,841,035 |
| | <u>150,159,010</u> | <u>141,070,009</u> |
| Less: Accumulated Depreciation and Amortization | (48,736,906) | (39,576,929) |
| | <u>\$ 101,422,104</u> | <u>\$ 101,493,080</u> |

Depreciation expense related to property, plant and equipment totaled \$3,154,623 and \$9,235,932 for the three and nine months ended September 30, 2017, respectively, of which \$1,447,992 and \$4,329,624 was recorded to cost of goods sold for the three and nine months ended September 30, 2017, respectively, with the remainder of depreciation and amortization expense recorded to selling, general and administrative expense.

Depreciation expense related to property, plant and equipment totaled \$2,669,278 and \$6,830,780 for the three and nine months ended September 30, 2016, respectively, of which \$1,241,563 and \$2,660,340 was recorded to cost of goods sold for the three and nine months ended September 30, 2016, respectively, with the remainder of depreciation and amortization expense recorded to selling, general and administrative expense.

Note 5 – Accrued Expenses:

| | September 30, 2017 | December 31, 2016 |
|--|---------------------------|--------------------------|
| Accrued Compensation | \$ 2,893,834 | \$ 1,895,443 |
| Accrued Chiller Cost | 1,343,951 | 1,010,018 |
| Accrued Freight | 838,665 | 359,009 |
| Accrued Marketing | 460,018 | 282,784 |
| Accrued VAT | 278,817 | — |
| Accrued Utility | 150,000 | 124,000 |
| Accrued Leadership Transition Expenses (1) | 66,505 | 428,150 |
| Other Accrued Expenses | 628,444 | 431,735 |
| | <u>\$ 6,660,234</u> | <u>\$ 4,531,139</u> |

(1) Accrued Leadership Transition Expenses represent costs detailed within our former Chief Executive Officer's separation agreement as well as incremental costs associated with leadership transition.

Note 6 – Debt:

On November 13, 2014, the Company entered into senior secured credit facilities (the "Debt Refinancing") comprised of a five-year \$18.0 million term facility (the "Term Facility"), a three-year \$10.0 million revolving facility (the "Revolving Facility") and a \$12.0 million additional term loan commitment earmarked primarily for capital expenditures (the "Capex Commitments" and together with the Term Facility and Revolving Facility, the "Credit Facilities" and such loan agreement, the "Loan Agreement").

FRESHPET, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

On December 23, 2014, the Company repaid the outstanding \$18.0 million and modified the terms of the \$40.0 million Credit Facilities. The \$18.0 million term facility was extinguished, the three-year \$10.0 million Revolving Facility remained unchanged and the \$12.0 million term loan commitment earmarked for capital expenditures was increased to \$30.0 million.

The New Revolver matures in September 2020 and borrowings thereunder will bear interest at variable rates depending on the Company's election, either at a base rate or at the London Interbank Offered Rate ("LIBOR"), in each case, plus an applicable margin. Subject to the Company's leverage ratio, the applicable margin will vary between 0.75% and 1.25% for base rate loans and 1.75% and 2.25% for LIBOR loans.

On September 21, 2017, the Company further amended the Loan Agreement (the "New Loan Agreement") which modified the \$10.0 million Revolving Facility to \$30.0 million (the "New Revolving Facility") and extinguished the \$30.0 million Capex Commitments. The New Loan Agreement has a term of three years and the ability to increase the New Revolving Facility by \$10.0 million, with borrowings bearing interest at variable rates.

The Company had \$7.5 million outstanding under the existing Credit Facilities prior to closing, which was repaid with proceeds from the New Revolving Facility and cash on hand. Upon closing, the Company had \$5.5 million outstanding and \$24.5 million available under the New Revolving Facility.

In connection with this amendment, the Company accelerated the amortization of \$0.3 million of unamortized debt issuance costs related to the existing Loan Agreement. These costs are included in Interest Expense in the three and nine months ended September 30, 2017.

The New Loan Agreement provides for the maintenance of various covenants, including financial covenants, and includes events of default that are customary for facilities of this type. As of September 30, 2017, the Company was in compliance with all the covenants in the New Loan Agreement.

Borrowings under our Credit Facilities totaled \$7.5 million and repayments totaled \$9.0 million for the nine months ended September 30, 2017. The Company had \$5.5 million in debt outstanding under the Credit Facilities.

Interest expense and fees totaled \$0.5 million and \$0.8 million for the three and nine months ended September 30, 2017, respectively, of which \$0.2 million was related to new debt issuance costs. Interest expense and fees totaled \$0.2 million and \$0.5 million for the three and nine months ended September 30, 2016, respectively. There was less than \$0.1 million of accrued interest on the Credit Facilities as of September 30, 2017 and December 31, 2016.

Note 7 – Equity Incentive Plans:

Total compensation cost for share-based payments recognized for the three months ended September 30, 2017 and 2016 was \$1,132,852 and \$787,675, respectively. Total compensation cost for share-based payments recognized for the nine months ended September 30, 2017 and 2016 was \$3,292,362 and \$3,490,754, respectively.

2006 Stock Plan— In December 2006, the Company approved the 2006 Stock Plan (the "2006 Plan") under which options to purchase approximately 624,223 shares of the Company's common stock were granted to employees and affiliates of the Company. These options are time-based (vest over five years). Certain option awards provide for accelerated vesting if there is a change in control (as defined in the 2006 Plan). At September 30, 2017, there were zero shares available for grant as the 2006 Plan is frozen.

2010 Stock Plan —In December 2010, the Company approved the 2010 Stock Plan (the "2010 Plan") under which options to purchase approximately 2,146,320 shares of the Company's common stock were granted to employees and affiliates of the Company (in 2012, the 2010 Plan was amended to allow for the granting of approximately 2,220,280 options to purchase shares of the Company's common stock). The outstanding options are time-based (vest between two and four years). The options granted have maximum contractual terms of 10 years. The Board of Directors froze the 2010 Plan such that no further grants may be issued under the 2010 Plan.

FRESHPET, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

2014 Omnibus Incentive Plan —In November 2014, the Company approved the 2014 Omnibus Incentive Plan (the “2014 Plan”) under which 1,479,200 shares of common stock may be issued or used for reference purposes as awards granted under the 2014 Plan. In September 2016, the 2014 Plan was amended to allow for the granting of an additional 2,500,000 shares of common stock to be issued or used for reference purposes as awards granted, for a total of 3,979,200 shares. These awards may be in the form of stock options, stock appreciation rights, restricted stock, as well as other stock-based and cash-based awards. As of September 30, 2017, the awards granted were either time-based, performance-based (vest when performance targets are met, as defined in the stock option grant agreement), or restricted stock units (employee RSUs vest over three years and non-employee director RSUs vest over one year).

At September 30, 2017, there were 2,092,881 shares of common stock available to be issued or used for reference purposes under the 2014 Plan.

NASDAQ Marketplace Rules Inducement Award —During fiscal year 2016, stock-based awards were granted to the Company’s Chief Executive Officer as an inducement under the NASDAQ Marketplace Rules, and therefore outside of any Plan. Under the terms of the agreement, the grant is governed as if issued under the 2014 Omnibus Plan. As of September 30, 2017, the awards granted were time-based (cliff vest over four years) and performance-based (vest when performance targets are met, as defined in the stock option grant agreement).

Service Period Stock Options

The following table includes activity related to outstanding service period stock options during the nine months ended September 30, 2017.

| Service Period Stock Options | Shares | Weighted Average Exercise Price |
|-------------------------------------|------------------|--|
| Outstanding at December 31, 2016 | 2,788,285 | \$ 8.61 |
| Granted | 340,618 | 11.00 |
| Exercised | (776,938) | 7.22 |
| Forfeited | (17,073) | 10.15 |
| Expired | (7,776) | 9.01 |
| Outstanding at September 30, 2017 | <u>2,327,116</u> | <u>\$ 9.41</u> |

Performance-Vested Stock Options

The following table includes activity related to outstanding performance-vested stock options during the nine months ended September 30, 2017.

| Performance Based Options | Shares | Weighted Average Exercise Price |
|-----------------------------------|------------------|--|
| Outstanding at December 31, 2016 | 1,357,561 | \$ 10.24 |
| Granted | 110,741 | 11.00 |
| Forfeited | (35,221) | 10.45 |
| Outstanding at September 30, 2017 | <u>1,433,081</u> | <u>\$ 10.29</u> |

(1) As of September 30, 2017, 516,877 performance-vested stock options at a weighted average exercise price of \$9.79 have performance metrics that are probable of achievement. These shares are included in share-based compensation costs for the three and nine months ended September 30, 2017.

FRESHPET, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Restricted Stock Units

The following table includes activity related to outstanding restricted stock units during the nine months ended September 30, 2017.

| Restricted Stock Units | Shares | Weighted-Average Grant-Date Fair Value Per Unit |
|-----------------------------------|----------------|---|
| Outstanding at December 31, 2016 | 97,515 | \$ 9.05 |
| Granted | 115,320 | 11.00 |
| Issued Upon Vesting | (59,183) | 9.05 |
| Forfeited | (1,433) | 9.98 |
| Outstanding at September 30, 2017 | <u>152,219</u> | <u>\$ 10.52</u> |

Note 8 – Earnings Per Share:

Basic net loss per share of common stock is calculated by dividing net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding for the period. Diluted net loss per share of common stock is computed by giving effect to all potentially dilutive securities.

For the three and nine months ended September 30, 2017 and 2016, there were no adjustments between net loss and net loss attributable to common stockholders.

The potentially dilutive securities are as follows:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|------------------------------|-------------------------------------|------------------|------------------------------------|------------------|
| | 2017 | 2016 | 2017 | 2016 |
| Service Period Stock Options | 2,471,469 | 2,263,098 | 2,691,504 | 2,130,200 |
| Restricted Stock Units | 152,598 | 102,904 | 142,180 | 54,154 |
| Warrants | — | 61,117 | — | 61,117 |
| Total | <u>2,624,067</u> | <u>2,427,119</u> | <u>2,833,684</u> | <u>2,245,471</u> |

For the three months ended September 30, 2017 and nine months ended September 30, 2017 and 2016, diluted net loss per share of common stock is the same as basic net loss per share of common stock, due to the fact that potentially dilutive securities would have an antidilutive effect as the Company incurred a net loss during such periods.

For the three months ended September 30, 2016, diluted net income per share of common stock is calculated as follows:

| | Three Months Ended September 30, 2016 |
|---|--|
| Net Income Attributable to Common Stockholders | \$ 620,731 |
| Weighted Average Common Shares Outstanding, Basic | 33,717,676 |
| Dilutive Effect of Stock-Based Awards: | |
| Service Period Stock Options | 381,953 |
| Restricted Stock Units | 49,283 |
| Warrants | 22,124 |
| Weighted Average Common Shares Outstanding, Diluted | 34,171,036 |
| Basic Earnings per Share | \$ 0.02 |
| Diluted Earnings per Share | \$ 0.02 |

FRESHPET, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

For the three months ended September 30, 2016, there were 450,189 anti-dilutive service period stock options excluded from the diluted earnings per share calculation.

Note 9 – Related Party Transactions:

Payments of \$2,016,716 and \$6,323,016 for the three and nine months ended September 30, 2017, and \$1,484,600 and \$4,666,495 for the three and nine months ended September 30, 2016, were made to one stockholder for the purchase of raw materials. The Company believes that all payments made to the shareholder are at market value and thus at arms-length.

Note 10 – Concentrations:

Concentration of Credit Risk —The Company maintains its cash balances in financial institutions which are insured by the Federal Deposit Insurance Corporation (“FDIC”) up to \$250,000 each. At times, such balances may be in excess of the FDIC insurance limit.

Net Sales By Class of Retailer – The following table sets forth net sales by class of retailer:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|----------------------------------|-------------------------------------|---------------|------------------------------------|---------------|
| | 2017 | 2016 | 2017 | 2016 |
| Grocery, Mass and Club | \$ 33,562,029 | \$ 27,550,612 | \$ 93,702,683 | \$ 77,583,710 |
| Pet Specialty, Natural and Other | 7,637,751 | 6,985,539 | 21,980,015 | 21,408,350 |
| Net Sales | \$ 41,199,780 | \$ 34,536,151 | \$ 115,682,698 | \$ 98,992,060 |

Note 11 – Subsequent Events:

The Company evaluates events that have occurred after the balance sheet date but before the financial statements are issued. Based upon the evaluation, the Company did not identify any recognized or unrecognized subsequent events that have required adjustment or disclosure in the financial statements.

Item 2. Management's Discussion and Analysis of Financial Conditions and Results of Operations

The following discussion summarizes the significant factors affecting our consolidated operating results, financial condition, liquidity and cash flows as of and for the periods presented below. The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes in Item 1 and with the audited consolidated financial statements and the related notes included in our Annual Report on Form 10-K.

In addition to historical information, this discussion and analysis contains forward-looking statements based on current expectations that involve risks, uncertainties and assumptions, such as our plans, objectives, expectations, and intentions set forth under the sections entitled "Forward-Looking Statements" in this report and "Risk Factors" in our Annual Report on Form 10-K. Our actual results and the timing of events may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth in the section entitled "Risk Factors" in our Annual Report on Form 10-K.

Overview

We started Freshpet with a single-minded mission to bring the power of real, fresh food to our dogs and cats. We were inspired by the rapidly growing view among pet owners that their dogs and cats are a part of their family, leading them to demand healthier pet food choices. Since inception of the company in 2006, we have created a comprehensive business model to deliver wholesome pet food that pet parents can trust, and in the process we believe we have become one of the fastest growing pet food companies in North America. Our business model is difficult for others to replicate and we see significant opportunity for future growth by leveraging the unique elements of our business, including our brand, our product know-how, our Freshpet Kitchens, our refrigerated distribution, our Freshpet Fridge and our culture.

Recent Developments

During the third quarter of 2017, we amended our Credit Facilities to replace our Term Facility and Capex Commitments of \$30.0 million and \$10.0 million Revolving Facility with a straight \$30.0 million revolver (the "New Revolving Facility") and the ability to increase the New Revolving Facility by an additional \$10.0 million. The New Revolving Facility will mature in September 2020. At closing, we had total borrowings of \$5.5 million under the \$30.0 million New Revolving Facility, with \$24.5 million available. We expect to fund our business through cash provided by operations for the remainder of 2017, while continuing to reduce the facility usage. This represents a reduction in the unused rate of between 25 and 75 basis points and a reduction in the total rate of between 200 and 250 basis points. The existing facility, which had \$7.5 million outstanding, was repaid with proceeds from the new revolver and cash on hand.

Components of our Operating Results

Net Sales

Our net sales are derived from the sale of pet food to our customers, who purchase either directly from us or through third-party distributors. Our products are sold to consumers through a fast-growing network of company-owned branded refrigerators, known as Freshpet Fridges, located in our customers' stores. We continue to roll out Freshpet Fridges across leading retailers and have installed Freshpet Fridges in over 17,600 retail stores as of September 30, 2017. All of our products are sold under the Freshpet brand name, with ingredients, packaging and labeling customized by class of retail. Sales are recorded net of discounts, slotting, returns and promotional allowances.

Our net sales growth is driven by the following key factors:

- Increasing sales velocity from the average Freshpet Fridge due to increasing awareness, trial and adoption of Freshpet products. Our investments in marketing and advertising help to drive awareness and trial at each point of sale.
- Increased penetration of Freshpet Fridge locations in major classes of retail, including grocery, mass, club, pet specialty and natural. The impact of new Freshpet Fridge installations on our net sales varies by retail class and depends on numerous factors including store traffic, refrigerator size, placement within the store, and proximity to other stores that carry our products.
- Consumer trends including growing pet ownership, pet humanization and a focus on health and wellness.

We believe that as a result of the above key factors, we will continue to penetrate the pet food marketplace and increase our share of the pet food category.

Gross Profit

Our gross profit is net of costs of goods sold, which include the costs of product manufacturing, product ingredients, packaging materials, spoils and inbound freight. In 2016, we undertook a capital expansion project at our Freshpet Kitchens facility that we believe will further increase our production capacity by at least 130%. Over time, growing capacity utilization of our new facility will allow us to leverage fixed costs and thereby expand our gross profit margins.

Our gross profit margins are also impacted by the cost of ingredients and packaging materials. We expect to mitigate any adverse movement in input costs through a combination of cost management and price increases.

Selling, General and Administrative Expenses

Our selling, general and administrative expenses consist of the following:

Selling, general and administrative costs. Selling, general & administrative (“SG&A”) costs as a percentage of net sales have historically decreased from 81.3% in the year ended 2012, 62.7% in 2013, 55.7% in 2014, 50.2% in 2015 and to 47.0% in 2016. Due to our Feed the Growth initiative, which increases our investment in media, we do not expect our SG&A as a percentage of net sales to change significantly in the near term future, which is noted within our slight increase of SG&A costs as a percentage of net sales increase from 49.4% in the nine months ended September 30, 2016 to 50.0% in the nine months ended September 30, 2017. We believe that as we begin to realize the benefits of our Feed the Growth initiative SG&A expenses will once again decrease as a percentage of net sales.

Outbound freight. Prior to the second quarter of 2016, outbound freight from our Freshpet Kitchens was managed by a national third-party refrigerated and frozen human food manufacturer. During the second quarter of 2016, we transitioned to a new third-party logistics provider. We have realized cost efficiencies in logistics through our new third-party logistics provider’s infrastructure. Additionally, we sell through third-party distributors for the grocery, mass, club, pet specialty and natural classes in the United States, Canada, and in the United Kingdom.

Marketing & advertising. Our marketing and advertising expenses primarily consist of national television media, digital marketing, social media and grass roots marketing to drive brand awareness. These expenses may vary from quarter to quarter depending on the timing of our marketing and advertising campaigns. Our Feed the Growth initiative will focus on growing the business through increased marketing investments.

Freshpet Fridge operating costs. Freshpet Fridge operating costs consist of repair costs and depreciation. The purchase and installation costs for new Freshpet Fridges are capitalized and depreciated over the estimated useful life. All new refrigerators are covered by a manufacturer warranty for three years. We subsequently incur maintenance and freight costs for repairs and refurbishments handled by third-party service providers.

Research & development. Research and development costs consist of expenses to develop and test new products. The costs are expensed as incurred.

Brokerage. We utilize third-party brokers to assist with monitoring our products at the point-of-sale as well as representing us at headquarters for various customers. These brokers visit our retail customers’ store locations to ensure items are appropriately stocked and maintained.

Stock compensation . We account for all share-based compensation payments issued to employees, directors and non-employees using a fair value method. Accordingly, share-based compensation expense is measured based on the estimated fair value of the awards on the grant date. We recognize compensation expense for the portion of the award that is ultimately expected to vest over the period during which the recipient renders the required services to us using the straight-line single option method.

Other general & administrative costs. Other general and administrative costs include non-plant personnel salaries and benefits, as well as corporate general & administrative costs.

Income Taxes

We had federal net operating loss ("NOL") carry forwards of approximately \$160.7 million as of December 31, 2016, which expire between 2025 and 2036. We may be subject to certain limitations in our annual utilization of NOL carry forwards to off-set future taxable income pursuant to Section 382 of the Internal Revenue Code, which could result in NOL carry forwards expiring unused. At December 31, 2016, we had approximately \$132.4 million of State NOL carry forwards, which expire between 2017 and 2036. At December 31, 2016, we had a full valuation allowance against our net deferred tax assets as the realization of such assets was not considered more likely than not.

Consolidated Statements of Operations and Comprehensive Loss

| | Three Months Ended September 30, | | | | Nine Months Ended September 30, | | | |
|--|----------------------------------|----------------|-----------|----------------|---------------------------------|----------------|------------|----------------|
| | 2017 | | 2016 | | 2017 | | 2016 | |
| | Amount | % of Net Sales | Amount | % of Net Sales | Amount | % of Net Sales | Amount | % of Net Sales |
| | (Dollars in thousands) | | | | (Dollars in thousands) | | | |
| Net sales | \$ 41,200 | 100% | \$ 34,536 | 100% | \$ 115,683 | 100% | \$ 98,992 | 100% |
| Cost of goods sold | 21,697 | 53 | 19,185 | 56 | 62,207 | 54 | 53,841 | 54 |
| Gross profit | 19,503 | 47 | 15,351 | 44 | 53,476 | 46 | 45,151 | 46 |
| Selling, general and administrative expenses | 19,304 | 47 | 14,543 | 42 | 57,844 | 50 | 48,917 | 49 |
| (Loss)/Income from operations | 199 | 0 | 808 | 2 | (4,368) | (4) | (3,766) | (4) |
| Other income/(expenses): | | | | | | | | |
| Other income/(expenses), net | 41 | 0 | 42 | 0 | (516) | (0) | (93) | (0) |
| Interest expense | (465) | (0) | (214) | 0 | (831) | (0) | (490) | (0) |
| (Loss)/Income before income taxes | (225) | (1) | 636 | 2 | (5,715) | (5) | (4,349) | (4) |
| Income tax expense | 21 | 0 | 15 | 0 | 62 | 0 | 45 | 0 |
| Net (Loss)/Income | \$ (246) | (1)% | \$ 621 | 2% | \$ (5,777) | (5)% | \$ (4,394) | (4)% |

Three Months Ended September 30, 2017 Compared to Three Months Ended September 30, 2016

Net Sales

The following table sets forth net sales by class of retailer:

| | Three Months Ended September 30, | | | | | |
|--------------------------------------|----------------------------------|----------------|-------------|-----------|----------------|-------------|
| | 2017 | | | 2016 | | |
| | Amount | % of Net Sales | Store Count | Amount | % of Net Sales | Store Count |
| | (Dollars in thousands) | | | | | |
| Grocery, Mass and Club* (1) | \$ 33,562 | 81% | 12,777 | \$ 27,551 | 80% | 11,454 |
| Pet Specialty, Natural and Other (2) | 7,638 | 19 | 4,873 | 6,985 | 20 | 4,807 |
| Net Sales | \$ 41,200 | 100% | 17,650 | \$ 34,536 | 100% | 16,261 |

(1) Stores at September 30, 2017 and September 30, 2016 consisted of 8,872 and 7,669 Grocery and 3,905 and 3,785 Mass and Club, respectively.

(2) Stores at September 30, 2017 and September 30, 2016 consisted of 4,539 and 4,505 Pet Specialty and 334 and 302 Natural, respectively.

* Includes sales from Freshpet Baked product of \$0.4 million and \$0.9 million, or 1.0% and 3.0% of total net sales, for the three months ended September 30, 2017 and 2016, respectively.

Net sales increased \$6.7 million, or 19%, to \$41.2 million for the three months ended September 30, 2017 as compared to the same period in the prior year. The \$6.7 million increase in net sales was driven by growth of \$6.8 million in our Grocery, Mass, and Club refrigerated channel and \$0.7 million in our Pet Specialty, Natural, and Other refrigerated channel, partially offset by declines in Baked of \$0.8 million. Net sales excluding baked increased \$7.1 million, or 21.2%, to \$40.8 million for the three months ended September 30, 2017 as compared to the same period in the prior year. Our Freshpet Fridge store locations grew by 8.5% from 16,261 as of September 30, 2016 to 17,650 as of September 30, 2017.

Gross Profit

Gross profit increased \$4.2 million, or 27%, to \$19.5 million for the three months ended September 30, 2017 as compared to the same period in the prior year. The increase in gross profit was primarily driven by higher net sales and an increase in gross profit margin.

Our gross profit margin of 47.3% for the three months ended September 30, 2017 increased 290 basis points compared to the same period in the prior year, primarily related to cost savings and margin improvement through scale and plant startup costs in the prior year, partially offset by a decrease due to additional depreciation of our Freshpet Kitchens expansion.

Adjusted Gross Profit was \$21.0 million and \$17.1 million in the three months ended September 30, 2017 and 2016, respectively. Adjusted Gross Profit Margin was 50.9% and 49.6% in the three months ended September 30, 2017 and 2016, respectively. Adjusted Gross Profit excludes \$1.4 million of depreciation expense in the three months ended September 30, 2017, and \$1.2 million of depreciation expense and \$0.5 million of non-capitalizable plant start-up costs in the three months ended September 30, 2016. See “—Non-GAAP Financial Measures” for how we define Adjusted Gross Profit and a reconciliation of Adjusted Gross Profit to Gross Profit, the closest comparable U.S. GAAP measure.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased \$4.8 million, or 33%, to \$19.3 million for the three months ended September 30, 2017 as compared to the same period in the prior year. Key components of the dollar increase include higher media spend of \$1.9 million, higher stock-based compensation expenses of \$0.3 million, higher freight costs due to volume of \$0.8 million, higher non-recurring expenses related to leadership transition expenses of \$0.4 million, higher depreciation expense of \$0.3 million and incremental operating expenses of \$1.1 million. The increased operating expenses were primarily due to new hires and increased employee benefit costs, which include variable compensation.

As a percentage of net sales, selling, general and administrative expenses increased to 46.9% for the three months ended September 30, 2017 from 42.1% for the three months ended September 30, 2016. Adjusted SG&A increased as a percentage of net sales to 44.0% in the third quarter of 2017 as compared to 40.8% of net sales in the third quarter of 2016. Adjusted SG&A excludes \$1.1 million and \$0.7 million for stock-based compensation expense in the third quarter of 2017 and 2016, respectively, and \$0.1 million incremental costs and \$0.3 million change in estimate related to leadership transition expenses in the third quarter of 2017 and 2016, respectively. See “—Non-GAAP Financial Measures” for how we define Adjusted SG&A and a reconciliation of Adjusted SG&A to SG&A, the closest comparable U.S. GAAP measure.

Income/(Loss) from Operations

Income/(Loss) from Operations decreased \$0.6 million, or 75%, to \$0.2 million for the three months ended September 30, 2017 as compared to the same period in the prior year as a result of the factors discussed above.

Interest Expense

Interest expense relating primarily to our Credit Facilities was \$0.5 million and \$0.2 million in the three months ended September 30, 2017 and 2016, respectively. Interest expense in the three months ended September 30, 2017 includes \$0.3 million of accelerated amortization of debt issuance costs related to the amendment of our Credit Facilities.

Other Income/(Expenses), net

Other income, net decreased less than \$0.1 million for the three months ended September 30, 2017.

Net Income/(Loss)

Net Loss increased \$0.8 million to \$0.2 million for the three months ended September 30, 2017 as compared to income of \$0.6 million for the same period in the prior year.

Nine Months Ended September 30, 2017 Compared to Nine Months Ended September 30, 2016

Net Sales

The following table sets forth net sales by class of retailer:

| | Nine Months Ended September 30, | | | | | |
|--------------------------------------|---------------------------------|----------------|---------------|------------------|----------------|---------------|
| | 2017 | | | 2016 | | |
| | Amount | % of Net Sales | Store Count | Amount | % of Net Sales | Store Count |
| | (Dollars in thousands) | | | | | |
| Grocery, Mass and Club* (1) | \$ 93,703 | 81% | 12,777 | \$ 77,584 | 78% | 11,454 |
| Pet Specialty, Natural and Other (2) | 21,980 | 19 | 4,873 | 21,408 | 22 | 4,807 |
| Net Sales | <u>\$ 115,683</u> | <u>100%</u> | <u>17,650</u> | <u>\$ 98,992</u> | <u>100%</u> | <u>16,261</u> |

(1) Stores at September 30, 2017 and September 30, 2016 consisted of 8,872 and 7,669 Grocery and 3,905 and 3,785 Mass and Club, respectively.

(2) Stores at September 30, 2017 and September 30, 2016 consisted of 4,539 and 4,505 Pet Specialty and 334 and 302 Natural, respectively.

* Includes sales from Freshpet Baked product of \$1.7 million and \$3.6 million, or 2.0% and 4.0% of total net sales, for the nine months ended September 30, 2017 and 2016, respectively.

Net sales increased \$16.7 million, or 17%, to \$115.7 million for the nine months ended September 30, 2017 as compared to the same period in the prior year. The \$16.7 million increase in net sales was driven by growth of \$18.0 million in our Grocery, Mass, and Club refrigerated channel and \$0.6 million in our Pet Specialty, Natural, and Other refrigerated channel and declines in Baked of \$1.9 million. Net sales excluding baked increased \$18.6 million, or 19.4%, to \$113.9 million for the nine months ended September 30, 2017 as compared to the same period in the prior year. Our Freshpet Fridge store locations grew by 8.5% from 16,261 as of September 30, 2016 to 17,650 as of September 30, 2017.

Gross Profit

Gross profit increased \$8.3 million, or 18%, to \$53.5 million for the nine months ended September 30, 2017 as compared to the same period in the prior year. The increase in gross profit was primarily driven by higher net sales and an increase in gross profit margin.

Our gross profit margin of 46.2% for the nine months ended September 30, 2017 increased 60 basis points compared to the same period in the prior year, primarily related to cost savings and margin improvement through scale and plant startup costs in the prior year, partially offset by additional depreciation of our Freshpet Kitchens expansion.

Adjusted Gross Profit was \$57.8 million and \$49.0 million in the nine months ended September 30, 2017 and 2016, respectively. Adjusted Gross Profit Margin was 50.0% and 49.5% in the nine months ended September 30, 2017 and 2016, respectively. Adjusted Gross Profit excludes \$4.3 million of depreciation expense in the nine months ended September 30, 2017, and \$2.7 million of depreciation expense and \$1.2 million of non-capitalizable plant start-up costs in the nine months ended September 30, 2016. See “—Non-GAAP Financial Measures” for how we define Adjusted Gross Profit and a reconciliation of Adjusted Gross Profit to Gross Profit, the closest comparable U.S. GAAP measure.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased \$8.9 million, or 18%, to \$57.8 million for the nine months ended September 30, 2017 as compared to the same period in the prior year. Key components of the dollar increase include higher media spend of \$4.9 million, higher depreciation expense of \$0.8 million, increased freight costs due to volume of \$1.0 million and higher incremental operating expenses of \$3.6 million, offset by lower share-based compensation expense of \$0.2 million and lower non-recurring costs related to leadership transition expenses of \$1.2 million.

As a percentage of net sales, selling, general and administrative expenses increased to 50.0% for the nine months ended September 30, 2017 from 49.4% for the nine months ended September 30, 2016. Adjusted SG&A increased as a percentage of net sales to 47.2% in the first nine months of 2017 as compared to 44.8% of net sales in the same period of 2016. Adjusted SG&A excludes \$3.1 million and \$3.3 million for stock-based compensation expense in the nine months.

ended September 30 2017 and 2016, respectively, and \$0.1 million and \$1.3 million of costs related to leadership transition expenses in the third quarter of 2017 and 2016, respectively. See “—Non-GAAP Financial Measures” for how we define Adjusted SG&A and a reconciliation of Adjusted SG&A to SG&A, the closest comparable U.S. GAAP measure.

Loss from Operations

Loss from operations increased \$0.6 million to \$4.4 million for the nine months ended September 30, 2017 as compared to the same period in the prior year as a result of the factors discussed above.

Interest Expense

Interest expense relating primarily to our Credit Facilities was \$0.8 million and \$0.5 million in the nine months ended September 30, 2017 and 2016, respectively. Interest expense in the nine months ended September 30, 2017 includes \$0.3 million of accelerated amortization of debt issuance costs related to the amendment of our Credit Facilities.

Other Expenses, net

Other expenses, net increased \$0.4 million to \$0.5 million for the nine months ended September 30, 2017, primarily related to the revaluation of warrants of \$0.3 million and foreign currency forward contracts of \$0.1 million to fair value. The outstanding warrants were converted to common stock during the third quarter of 2017.

Net Loss

Net Loss increased \$1.4 million, or 31%, to \$5.8 million for the nine months ended September 30, 2017 as compared to a loss of \$4.4 million for the same period in the prior year.

Non-GAAP Financial Measures

Freshpet uses the following non-GAAP financial measures in its financial communications. These non-GAAP financial measures should be considered as supplements to the GAAP reported measures, should not be considered replacements for, or superior to, the GAAP measures and may not be comparable to similarly named measures used by other companies.

- Adjusted Gross Profit
- Adjusted Gross Profit as a percentage of net sales (Adjusted Gross Margin)
- Adjusted SG&A expenses
- Adjusted SG&A expenses as a percentage of net sales
- EBITDA
- Adjusted EBITDA

The non-GAAP financial measures are not financial measures prepared in accordance with U.S. GAAP. We define Adjusted Gross Profit as Gross Profit before non-cash depreciation expense and plant start-up costs. We define Adjusted SG&A Expenses as SG&A Expenses before non-cash share-based compensation, leadership transition expenses and fees related to a secondary offering. EBITDA represents net loss plus depreciation and amortization, interest expense and income tax expense. Adjusted EBITDA represents EBITDA plus loss on disposal of equipment, plant start-up expense, share-based compensation, warrant fair valuation, launch expenses, fees related to a secondary offering and leadership transition costs.

We believe that each of these non-GAAP financial measures provides an additional metric to evaluate our operations and, when considered with both our U.S. GAAP results and the reconciliation to the closest comparable U.S. GAAP measures, provides a more complete understanding of our business than could be obtained absent this disclosure. We use the non-GAAP financial measures, together with U.S. GAAP financial measures, such as net sales, gross profit margins and cash flow from operations, to assess our historical and prospective operating performance, to provide meaningful comparisons of operating performance across periods, to enhance our understanding of our operating performance and to compare our performance to that of our peers and competitors.

Adjusted EBITDA is an important component of internal budgeting and setting management compensation.

The non-GAAP financial measures are presented here because we believe they are useful to investors in assessing the operating performance of our business without the effect of non-cash items, and other items as detailed below. The non-GAAP financial measures should not be considered in isolation or as alternatives to net loss, income from operations or any other measure of financial performance calculated and prescribed in accordance with U.S. GAAP. Neither EBITDA nor Adjusted EBITDA should be considered a measure of discretionary cash available to us to invest in the growth of our business. Our non-GAAP financial measures may not be comparable to similarly titled measures in other organizations because other organizations may not calculate non-GAAP financial measures in the same manner as we do.

Our presentation of the non-GAAP financial measures should not be construed as an inference that our future results will be unaffected by the expenses that are excluded from that term or by unusual or non-recurring items. We recognize that the non-GAAP financial measures have limitations as analytical financial measures. For example, the non-GAAP financial measures do not reflect:

- our capital expenditures or future requirements for capital expenditures;
- the interest expense, or the cash requirements necessary to service interest expense or principal payments, associated with indebtedness;
- depreciation and amortization, which are non-cash charges, although the assets being depreciated and amortized will likely have to be replaced in the future, nor any cash requirements for such replacements; and
- changes in or cash requirements for our working capital needs.

Additionally, Adjusted EBITDA excludes (i) non-cash stock based compensation expense, which is and will remain a key element of our overall long term incentive compensation package, and (ii) certain costs essential to our sales growth and strategy, including an allowance for marketing expenses for each new store added to our network and non-capitalizable freight costs associated with Freshpet Fridge replacements. Adjusted EBITDA also excludes certain cash charges resulting

from matters we consider not to be indicative of our ongoing operations. Other companies in our industry may calculate the non-GAAP financial measures differently than we do, limiting their usefulness as comparative measures.

The following table provides a reconciliation of EBITDA and Adjusted EBITDA to net loss, the most directly comparable financial measure presented in accordance with U.S. GAAP:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|-------------------------------------|-----------------|------------------------------------|------------------|
| | 2017 | 2016 | 2017 | 2016 |
| | (Dollars in thousands) | | | |
| Net (Loss)/Income | \$ (246) | \$ 621 | \$ (5,778) | \$ (4,394) |
| Depreciation and amortization | 3,216 | 2,720 | 9,411 | 6,957 |
| Interest expense | 465 | 214 | 831 | 490 |
| Income tax expense | 21 | 15 | 62 | 45 |
| EBITDA | \$ 3,456 | \$ 3,570 | \$ 4,526 | \$ 3,098 |
| Loss on disposal of equipment | 7 | 11 | 98 | 170 |
| Launch expense (a) | 929 | 728 | 2,359 | 2,038 |
| Plant start-up expenses and processing (b) | — | 540 | — | 1,208 |
| Non-cash stock based compensation (c) | 1,133 | 788 | 3,292 | 3,459 |
| Warrant fair valuation (d) | (44) | (47) | 335 | (19) |
| Leadership transition expenses (e) | 100 | (253) | 100 | 1,327 |
| Adjusted EBITDA | \$ 5,580 | \$ 5,337 | \$ 10,709 | \$ 11,281 |

(a) Represents new store marketing allowance of \$1,000 for each store added to our distribution network as well as the non-capitalized freight costs associated with Freshpet Fridge replacements. The expense enhances the overall marketing spend to support our growing distribution network.

(b) Represents additional operating costs incurred in 2016 in connection with the start-up of our new manufacturing lines as part of the Freshpet Kitchens expansion project.

(c) Represents non-cash stock based compensation expense.

(d) Represents the change of fair value for the outstanding common stock warrants. All warrants were converted to common stock in the third quarter of 2017.

(e) Leadership Transition Expenses represent costs detailed within our former Chief Executive Officer's separation agreement as well as incremental costs associated with leadership transition.

The following table provides a reconciliation of Adjusted Gross Profit to Gross Profit, the most directly comparable financial measure presented in accordance with U.S. GAAP:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|-------------------------------------|------------------|------------------------------------|------------------|
| | 2017 | 2016 | 2017 | 2016 |
| Gross Profit (as reported) | \$ 19,503 | \$ 15,351 | \$ 53,476 | \$ 45,151 |
| Depreciation expense (a) | 1,448 | 1,242 | 4,330 | 2,660 |
| Plant start-up expenses and processing (b) | — | 540 | — | 1,208 |
| Adjusted Gross Profit | \$ 20,951 | \$ 17,133 | \$ 57,805 | \$ 49,019 |
| Adjusted Gross Profit as a % of Net Sales | | | | |
| Adjusted Gross Profit | \$ 20,951 | \$ 17,133 | \$ 57,805 | \$ 49,019 |
| Net Sales | \$ 41,200 | \$ 34,536 | \$ 115,683 | \$ 98,992 |
| Adjusted Gross Profit as a % of Net Sales | 50.9% | 49.6% | 50.0% | 49.5% |

(a) Represents non-cash depreciation expense included in Cost of Goods Sold.

(b) Represents additional operating costs incurred in 2016 in connection with the start-up of our new manufacturing lines as part of the Freshpet Kitchens expansion project.

The following table provides a reconciliation of Adjusted SG&A Expenses to SG&A Expenses, the most directly comparable financial measure presented in accordance with U.S. GAAP:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|-------------------------------------|------------------|------------------------------------|------------------|
| | 2017 | 2016 | 2017 | 2016 |
| SG&A expenses (as reported) | \$ 19,304 | \$ 14,543 | \$ 57,844 | \$ 48,917 |
| Non-cash stock based compensation (a) | 1,064 | 716 | 3,118 | 3,282 |
| Leadership transition expenses (b) | 100 | (253) | 100 | 1,327 |
| Adjusted SG&A Expenses | \$ 18,139 | \$ 14,080 | \$ 54,628 | \$ 44,308 |
| Adjusted SG&A Expenses as a % of Net Sales | | | | |
| Adjusted SG&A Expenses | \$ 18,139 | \$ 14,080 | \$ 54,628 | \$ 44,308 |
| Net Sales | \$ 41,200 | \$ 34,536 | \$ 115,683 | \$ 98,992 |
| Adjusted SG&A as a % of Net Sales | 44.0% | 40.8% | 47.2% | 44.8% |

(a) Represents non-cash stock based compensation expense.

(b) Represents costs detailed within our former Chief Executive Officer's separation agreement as well as incremental costs associated with leadership transition.

Liquidity and Capital Resources

Developing our business will require significant capital in the future. To meet our capital needs, we expect to rely on our future cash flow from operations and our current available borrowing capacity. Our ability to obtain additional funding will be subject to various factors, including general market conditions, our operating performance, the market's perception of our growth potential, lender sentiment and our ability to incur additional debt in compliance with other contractual restrictions, such as financial covenants under our debt agreements.

Additionally, our ability to make payments on, and to refinance, any indebtedness under our Credit Facilities and to fund any necessary expenditures for our growth will depend on our ability to generate cash in the future. If our business does not achieve the levels of profitability or generate the amount of cash that we anticipate or if we expand faster than anticipated, we may need to seek additional debt or equity financing to operate and expand our business. Future third-party financing may not be available on favorable terms or at all.

Our primary cash needs are for ingredients, purchases and operating expenses, marketing expenses and capital expenditures to procure Freshpet Fridges and expand and improve our manufacturing plant to support our net sales growth. We believe that cash and cash equivalents, expected cash flow from operations and planned borrowing capacity are adequate to fund debt service requirements, operating lease obligations, capital expenditures and working capital obligations for the foreseeable future. However, our ability to continue to meet these requirements and obligations will depend on, among other things, our ability to achieve anticipated levels of revenue and cash flow from operations and our ability to manage costs and working capital successfully. Additionally, our cash flow generation ability is subject to general economic, financial, competitive, legislative and regulatory factors and other factors that are beyond our control. We cannot assure you that our business will generate cash flow from operations in an amount sufficient to enable us to fund our liquidity needs. Further, our capital requirements may vary materially from those currently planned if, for example, our revenues do not reach expected levels or we have to incur unforeseen capital expenditures and make investments to maintain our competitive position. If this is the case, we may seek alternative financing, such as selling additional debt or equity securities, and we cannot assure you that we will be able to do so on favorable terms, if at all. Moreover, if we issue new debt securities, the debt holders would have rights senior to common stockholders to make claims on our assets, and the terms of any debt could restrict our operations, including our ability to pay dividends on our common stock. If we issue additional equity or convertible debt securities, existing stockholders may experience dilution and such new securities could have rights senior to those of our common stock. These factors may make the timing, amount, terms and conditions of additional financings unattractive. Our inability to raise capital could impede our growth or otherwise require us to forego growth opportunities and could materially adversely affect our business, financial condition and results of operations.

Working capital consists of current assets net of current liabilities, excluding cash, net of debt. Working capital increased \$3.9 million to \$7.6 million at September 30, 2017 compared with \$3.7 million at December 31, 2016. The increase was a result of increased accounts receivable and inventory, offset by an increase in accounts payable and accrued expenses.

We normally carry three to four weeks of finished goods inventory. The average duration of our accounts receivable is approximately three weeks.

As of September 30, 2017, our capital resources consisted primarily of \$2.1 million cash on hand and \$24.5 million available under our Credit Facilities. In the third quarter of 2017, we amended our Credit Facilities, under which outstanding borrowings of \$5.5 million were refinanced and \$2.0 million were repaid. In 2017, as part of our Feed The Growth initiative, we are increasing our investment in marketing and borrowed an additional \$2.0 million. On a net basis, we have repaid \$6.5 million and have \$5.5 million outstanding on our Credit Facilities. We expect to fund our ongoing operations and obligations with cash and cash equivalents on hand, cash flow from operations and available funds under our Credit Facilities.

The following table sets forth, for the periods indicated, our beginning balance of cash, net cash flows provided by (or used in) operating, investing and financing activities and our ending balance of cash.

| | Nine Months Ended September 30, | |
|---|--|-----------------|
| | 2017 | 2016 |
| | (Dollars in thousands) | |
| Cash at the beginning of period | \$ 3,908 | \$ 8,029 |
| Net cash provided by operating activities | 5,129 | 7,319 |
| Net cash used in investing activities | (10,836) | (22,834) |
| Net cash provided by financing activities | 3,867 | 10,981 |
| Cash at the end of period | <u>\$ 2,069</u> | <u>\$ 3,496</u> |

Net Cash Provided by Operating Activities

Cash provided by operating activities consists primarily of net income adjusted for certain non-cash items (i.e. provision for loss on receivables, loss on disposal of equipment, change in reserve for inventory obsolescence, depreciation and amortization, amortization of deferred financing costs and loan discount, share-based compensation and the fair valuation of warrants).

For the nine months ended September 30, 2017, net cash provided by operating activities was \$5.1 million, consisting of net income, adjusted for reconciling non-cash items, of \$8.1 million and a decrease in operating assets and liabilities of \$3.0 million. Net income, adjusted for reconciling non-cash items, excludes \$13.9 million of non-cash items primarily relating to

\$3.3 million of share-based compensation and \$9.4 million of depreciation and amortization. The increase in assets of \$7.6 million is primarily related to growth in accounts receivable, which is primarily due to growth in net sales and an increase in the number of stores with a Freshpet Fridge. The increase in liabilities of \$4.7 million was primarily due to timing of payments due to increased media spend in the third quarter of fiscal year 2017.

For the nine months ended September 30, 2016, net cash provided by operating activities was \$7.3 million, primarily consisting of adjusted net income of \$6.4 million, which excludes \$10.8 million of non-cash items primarily relating to \$3.5 million of share based compensation and \$7.0 million of depreciation and amortization. Proceeds were offset by a change in operating assets and liabilities of \$0.9 million. Change in assets of \$2.1 million is primarily related to growth in accounts receivable, which is primarily due to growth in net sales and an increase in the number of stores with a Freshpet Fridge. The increase in liabilities of \$3.0 million was due to timing of payments and accrued leadership transition costs.

Net Cash Used in Investing Activities

Net cash used in investing activities was \$10.8 million for the nine months ended September 30, 2017, relating primarily to capital expenditures for Freshpet Kitchens of \$2.8 million and investment in fridges and other capital spend of \$8.0 million.

Net cash used in investing activities was \$22.8 million for the nine months ended September 30, 2016, relating primarily to September 30, 2016 capital expenditures for Freshpet Kitchens of \$19.8 million (including the Freshpet Kitchens expansion of \$17.4 million and recurring capital expenditures of \$2.4 million) and investment in fridges and other capital spend of \$6.3 million. The cash used in investing activities was partially offset by maturities of short-term investments of \$3.3 million.

Net Cash Provided by Financing Activities

Net cash provided by financing activities was \$3.9 million for the nine months ended September 30, 2017, attributable to the proceeds from borrowings under our Credit Facilities of \$7.5 million and cash proceeds from the exercise of stock options of \$5.6 million, partially offset by repayments of borrowings under Credit Facilities of \$9.0 million and payments of debt issuance costs in connection with the amendment of our Credit Facility of \$0.2 million.

Net cash from financing activities was \$11.0 million for the nine months ended September 30, 2016, attributable to the exercise of stock options of \$2.0 million and the proceeds from borrowing \$10.0 million under our Credit Facilities, partially offset by repayments of short term borrowing of \$1.0 million.

Indebtedness

On November 13, 2014, the Company entered into Debt Refinancing comprised of the Credit Facilities and such Loan Agreement. On December 23, 2014, the Company repaid the outstanding \$18.0 million and modified the terms of the \$40.0 million Credit Facilities. The \$18.0 million term facility was extinguished, the three-year \$10.0 million Revolving Facility remained unchanged and the \$12.0 million term loan commitment earmarked for capital expenditures was increased to \$30.0 million.

The New Revolver matures in September 2020 and borrowings thereunder will bear interest at variable rates depending on the Company's election, either at a base rate or at the London Interbank Offered Rate ("LIBOR"), in each case, plus an applicable margin. Subject to the Company's leverage ratio, the applicable margin will vary between 0.75% and 1.25% for base rate loans and 1.75% and 2.25% for LIBOR loans. In addition, the Company will be required to pay customary fees and expenses in connection with the New Loan Agreement.

On September 21, 2017, the Company further amended the Loan Agreement (the "New Loan Agreement") which modified the \$10.0 million Revolving Facility to \$30.0 million and extinguished the \$30.0 million Capex Commitments. The New Loan Agreement has a term of three years and the ability to increase the New Revolving Facility by \$10.0 million, with borrowings bearing interest at variable rates.

The Company had \$7.5 million outstanding under the existing Credit Facilities prior to closing, which was repaid with proceeds from the New Revolving Facility and cash on hand. Upon closing, the Company had \$5.5 million outstanding and \$24.5 million available under the New Revolving Facility.

In connection with this amendment, the Company accelerated the amortization of \$0.3 million of unamortized debt issuance costs related to the existing Loan Agreement. These costs are included in Interest expense in the three and nine months ended September 30, 2017.

The New Loan Agreement provides for the maintenance of various covenants, including financial covenants, and includes events of default that are customary for facilities of this type. As of September 30, 2017, the Company was in compliance with all the covenants in the New Loan Agreement.

Borrowings under our Credit Facilities totaled \$7.5 million and repayments totaled \$9.0 million for the nine months ended September 30, 2017. The Company had \$5.5 million in debt outstanding under the Credit Facilities.

Interest expense and fees totaled \$0.5 million and \$0.8 million for the three and nine months ended September 30, 2017, respectively, of which \$0.2 million was related to new debt issuance costs. Interest expense and fees totaled \$0.2 million and \$0.5 million for the three and nine months ended September 30, 2016, respectively. There was less than \$0.1 million of accrued interest on the Credit Facilities as of September 30, 2017 and December 31, 2016.

Contractual Obligations

There were no material changes to our commitments under contractual obligations, as disclosed in our Form 10-K.

Off Balance Sheet Arrangements

We have no off balance sheet arrangements or any holdings in variable interest entities.

Critical Accounting Policies and Significant Estimates

Our discussion and analysis of our financial condition and results of operations are based upon our financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities and the related disclosure of contingent assets and liabilities, revenue and expenses at the date of the financial statements. Generally, we base our estimates on historical experience and on various other assumptions in accordance with U.S. GAAP that we believe to be reasonable under the circumstances. Actual results may differ from these estimates.

There have been no material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates described in our Form 10-K.

Recent Accounting Pronouncements

Not Yet Adopted

In May 2014, the Financial Accounting Standard Board ("FASB") issued ASU No. 2014-09, "Revenue from Contracts with Customers," which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The ASU will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. In connection with this ASU, the FASB also issued ASU No. 2016-10 regarding identification of performance obligations and licensing considerations, ASU No. 2016-12 regarding narrow scope improvements and practical expedients- and ASU No. 2016-08 which clarifies the implementation of guidance on principal versus agent considerations. In August 2015, the FASB deferred the effective date of ASU No. 2014-09 to fiscal years beginning after December 15, 2017, with early adoption permitted only for fiscal years beginning after December 15, 2016. The standard permits the use of either the retrospective or cumulative effect transition method.

The Company is currently utilizing a comprehensive approach to assess the impact of this guidance by reviewing current accounting policies to identify the potential impact of the new requirements on its revenue contracts. The Company does not currently expect this guidance to have a material impact on its consolidated financial statements. The new standard will be effective as of January 1, 2018. The Company currently anticipates adopting Topic 606 using the modified retrospective transition approach that may result in a cumulative adjustment to beginning retained earnings as of January 1, 2018. Based on the Company's analysis to date, the Company expects the new standard will require accelerated recognition of trade promotions and customer incentives. These transactions are currently recognized at the later of the sale of goods or agreement, however under the new standard the Company will estimate incentives to be offered to customers as part of the sales price. The Company does not expect the change to be material.

In February 2016, the FASB issued ASU No. 2016-02, "Leases," which requires lessees to recognize the assets and liabilities that arise from leases on the balance sheet. A lessee should recognize in the statement of financial position a

liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. The new guidance is effective for financial statements issued for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. The amendments should be applied at the beginning of the earliest period presented using a modified retrospective approach with earlier application permitted as of the beginning of an interim or annual reporting period. The Company is assessing the impact of ASU No. 2016-02 on its corporate office lease, and upon adoption of this guidance, expects to record the lease on its consolidated balance sheet in accordance with ASU No. 2016-02.

Item 3. Quantitative and Qualitative Disclosures About Market Risks

Interest Rate Risk

We are sometimes exposed to market risks from changes in interest rates on debt and changes in commodity prices. Our exposure to interest rate fluctuations is limited to our outstanding indebtedness under our credit agreements, which bears interest at variable rates. As of September 30, 2017, we had \$5.5 million outstanding under our Credit Facilities. A change in interest rates of 100 basis points would cause a \$0.1 million increase or decrease in annual interest expense.

Commodity Price Risk

We purchase certain products that are affected by commodity prices and are, therefore, subject to price volatility caused by weather, market conditions and other factors which are not considered predictable or within our control. In many cases, we believe we will be able to address material commodity cost increases by either increasing prices or reducing operating expenses. However, increases in commodity prices, without adjustments to pricing or reduction to operating expenses, could increase our operating costs as a percentage of our net sales.

Foreign Exchange Rates

Fluctuations in the currencies of countries where the Company operates outside the U.S. may have a significant impact on financial results. The Company is exposed to movements in the British pound sterling. The Statements of Financial Position of non U.S. business units are translated into U.S. dollars using period-end exchange rates for assets and liabilities and weighted-average exchange rates for revenues and expenses. The percentage of consolidated revenue for the three and nine months ended September 30, 2017 recognized in the United Kingdom was approximately 1%.

The Company may enter into forward exchange contracts to reduce the Company's exposure to foreign currency fluctuations of certain assets and liabilities denominated in foreign currencies. The foreign currency forward contracts have not been designated as hedges and, accordingly, any changes in their fair value are recognized on the Consolidated Statements of Operations and Comprehensive Loss in Other expenses, net, and carried at their fair value in the Consolidated Balance Sheet with gains reported in Prepaid expenses and other current assets and losses reported in Accrued expenses.

As of September 30, 2017, the notional value of foreign currency forward contracts outstanding was 0.7 million pounds sterling. The fair value of the foreign currency forward contracts are measured using Level 2 inputs in the fair value hierarchy because they are determined based on a market approach utilizing externally quoted forward rates for similar contracts. For the three and nine months ended September 30, 2017 the net loss recognized on forward contracts was less than \$0.1 million.

Item 4. Controls and Procedures***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that as of such date our disclosure controls and procedures were effective.

Changes in Internal Control

There were no changes in our internal control over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the period covered by this Quarterly Report on Form 10-Q that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

A securities lawsuit, *Curran v. Freshpet, Inc. et al*, Docket No. 2:16-cv-02263, was instituted April 21, 2016 in the United States District Court for the District of New Jersey against us and certain of our executive officers and directors on behalf of certain purchasers of our common stock. We were served with a copy of the complaint in June 2016. The plaintiffs seek to recover damages for investors under the federal securities laws. The Company believes that the plaintiffs' allegations are without merit and intends to vigorously defend against the claims. Because the Company is in the early stages of litigation, the Company is unable to estimate a reasonably possible range of loss, if any, that may result from this matter.

In addition, we are currently involved in various claims and legal actions that arise in the ordinary course of our business, including claims resulting from employment related matters. None of these claims or proceedings, most of which are covered by insurance, are expected to have a material adverse effect on our business, financial condition, results of operations or cash flows. However, a significant increase in the number of these claims or an increase in amounts owing under successful claims could materially and adversely affect our business, financial condition, results of operations or cash flows.

Item 1A. Risk Factors

There have been no material changes from the risk factors previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2016.

Item 6. Exhibits

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| 10.1 | <u>Third Amended and Restated Loan and Security Agreement, dated September 21, 2017, by and among Freshpet, Inc., City National Bank, a national banking association, as the arranger and administrative agent, and the lenders party thereto</u> |
| 31.1 | <u>Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u> |
| 31.2 | <u>Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u> |
| 32.1 | <u>Certifications of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u> |
| EX-101.INS | XBRL Instance Document |
| EX-101.SCH | XBRL Schema Documents |
| EX-101.CAL | XBRL Calculation Linkbase Document |
| EX-101.LAB | XBRL Labels Linkbase Document |
| EX-101.PRE | XBRL Presentation Linkbase Document |
| EX-101.DEF | XBRL Definition Linkbase Document |

SIGNATURES

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

Date: November 7, 2017

FRESHPET, INC.

/s/ William B. Cyr
William B. Cyr
Chief Executive Officer
(Principal Executive Officer)

/s/ Richard Kassar
Richard Kassar
Chief Financial Officer
(Principal Financial and Accounting Officer)

THIRD AMENDED AND RESTATED LOAN

AND SECURITY AGREEMENT

by and among

FRESHPET, INC.

as Borrower,

THE LENDERS THAT ARE SIGNATORIES HERETO

as the Lenders,

and

CITY NATIONAL BANK,

together with its successors and assigns

as the Arranger and Administrative Agent

Dated as of September 21, 2017

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Exhibits

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THIRD AMENDED AND RESTATED LOAN AND

SECURITY AGREEMENT

THIS THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “Agreement”), is entered into as of September 21, 2017, 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”), **CITY NATIONAL BANK**, a national banking association (“CNB”), as the arranger and administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, “Agent”), and **FRESHPET, INC.**, a Delaware corporation (“Borrower”).

WHEREAS, Borrower, CNB, and CIT Bank, N.A., formerly known as OneWest Bank N.A., are parties to that certain Second Amended and Restated Loan and Security Agreement, dated as of November 13, 2014, as amended by that certain (i) Amendment Number One to Second Amended and Restated Loan and Security Agreement, dated as of December 22, 2014, (ii) Amendment Number Two to Second Amended and Restated Loan and Security Agreement and Consent, dated as of February 10, 2015, (iii) Amendment Number Three to Second Amended and Restated Loan and Security Agreement and Consent, dated as of March 11, 2015, (iv) Amendment Number Four to Second Amended and Restated Loan and Security Agreement and Consent, dated as of April 11, 2015, (v) Amendment Number Five to Second Amended and Restated Loan and Security Agreement and Consent, dated as of May 14, 2015, and (vi) Amendment Number Six to Second Amended and Restated Loan and Security Agreement, dated as of October 26, 2016 (as amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “Existing Loan Agreement”) pursuant to which the Lenders have made available to the Borrower the following credit facilities: (i) a delayed draw term loan facility in the aggregate maximum principal amount of \$30,000,000, with an aggregate outstanding principal amount of \$5,500,000 as of the date hereof and (ii) a revolving loan and letter of credit facility in the aggregate maximum principal amount of \$10,000,000, with an aggregate outstanding principal amount of \$2,000,000 as of the date hereof;

WHEREAS, Borrower has requested that the Existing Loan Agreement be amended and restated to (i) payoff (using the proceeds from loans made hereunder) and remove the term loan facilities thereunder, (ii) increase the revolving loan facility to \$30,000,000, and (iii) make other changes to the Existing Loan Agreement as set forth herein; and

WHEREAS, the Agent and the Lenders party hereto have agreed to amend and restate the Existing Loan Agreement as set forth in this Agreement, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend and restate the Existing Loan Agreement as follows, without constituting a novation:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions

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

“ 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.

“ 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).

“ 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 of the Stock of any other Person.

“ Additional Documents ” has the meaning set forth in Section 4.4(c).

“ Adjusted EBITDA ” means, with respect to any fiscal period, Borrower’s and its Subsidiaries’ consolidated gross revenue, *minus* the cost of goods sold, *minus* selling, general, and administrative expenses (but excluding: (a) any costs associated with the installation of refrigerators in new locations and marketing expenses incurred in connection with the introduction of new locations, provided that the aggregate amount excluded pursuant to this clause (a) with respect to any location shall not exceed \$2,000, (b) all non-cash expenses or losses, including any depreciation and amortization expense, (c) non-recurring fees, charges and other one-time start-up costs in connection with any real property (including all buildings, fixtures, integrated equipment or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Borrower for the purpose of developing, manufacturing and marketing pet food, and (d) other non-recurring fees, charges and other expenses that have been approved by Agent and the Lenders, such approval not to be unreasonably withheld), *plus* , any costs or expenses incurred pursuant to any stock option plan or any other management or employee benefit plan, agreement or any stock subscription or stockholders agreement.

“ Advances ” has the meaning set forth in Section 2.1.

“ Affiliate ” means, as applied to any Person, any other Person who, directly or indirectly through one or more intermediaries, 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 Section 7.13 hereof: (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 or joint venture in which a Person is a partner or member of a joint venture shall be deemed an Affiliate of such Person.

“ Agent ” has the meaning set forth in the preamble to this Agreement.

“ Agent Advances ” has the meaning set forth in Section 2.3(f)(i) .

“ 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 .

“ Agent’s Liens ” means the Liens granted by Borrower or its Subsidiaries to Agent under this Agreement or the other Loan Documents.

“ Agreement ” has the meaning set forth in the preamble hereto.

“ Applicable Cross-Default Amount ” means \$500,000.

“ Applicable Margin ” means, as of any date of determination and with respect to Base Rate Loans or LIBOR Rate Loans, as applicable, the applicable margin set forth in the following table that corresponds to the most recent Leverage Ratio calculation delivered to Agent pursuant to Section 6.3 of the Agreement (the “ Leverage Ratio Calculation ”); provided, that for the period from the Restatement Effective Date through and including the first day of the month following the date on which Agent receives the Leverage Ratio Calculation in respect of the testing period ending September 30, 2017, the Applicable Margin shall be set at the margin in the row styled “Level I”; provided further, that any time an Event of Default has occurred and is continuing, the Applicable Margin shall be set at the margin in the row styled “Level I”:

| <u>Level</u> | <u>Leverage Ratio</u> | <u>Applicable Margin Relative to Base Rate Loans (the “ Base Rate Margin ”)</u> | <u>Applicable Margin Relative to LIBOR Rate Loans (the “ LIBOR Rate Margin ”)</u> |
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|-----|---|------------------------|------------------------|
| I | Greater than 2.50:1.00 | 1.25 percentage points | 2.25 percentage points |
| II | Greater than 1.25:1.00 and less than or equal to 2.50:1.00 | 1.00 percentage points | 2.00 percentage points |
| III | Less than or equal to 1.25:1.00 | 0.75 percentage points | 1.75 percentage points |

Except as set forth in the foregoing proviso, the Applicable Margin shall be based upon the most recent Leverage Ratio Calculation, which will be calculated as of the end of each fiscal quarter. Except as set forth in the foregoing proviso, the Applicable Margin shall be re determined quarterly on the first day of the month following the date of delivery to Agent of the certified calculation of the Leverage Ratio pursuant to Section 6.3 (each such date, a “Redetermination Date”); provided, however, that if Borrower fails to provide such certification when such certification is due, the Applicable Margin shall be set at the margin in the row styled “Level I” as of the first day of the month following the date on which the certification was required to be delivered until the date on which such certification is delivered (on which date (but not retroactively), without constituting a waiver of any Default or Event of Default occasioned by the failure to timely deliver such certification, the Applicable Margin shall be set at the margin based upon the calculations disclosed by such certification. In the event that the information regarding the Leverage Ratio contained in any certificate delivered pursuant to Section 6.3 of the Agreement is shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Period”) than the Applicable Margin actually applied for such Applicable Period, then (i) Borrower shall promptly deliver to Agent a correct certificate for such Applicable Period, (ii) the Applicable Margin shall be determined as if the correct Applicable Margin (as set forth in the table above) were applicable for such Applicable Period, and (iii) Borrower shall promptly deliver to Agent full payment in respect of the accrued additional interest as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by Agent to the affected Obligations.

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

“ Assignee ” has the meaning set forth in Section 14.1(a) .

“ Assignment and Acceptance ” means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 .

“ Authorized Person ” means any officer or employee of Borrower.

“ Availability ” means, as of any date of determination, the amount that Borrower is entitled to borrow as Advances hereunder (after giving effect to all then outstanding Obligations (other than Bank Product Obligations) and all sublimits and reserves then applicable hereunder).

“ Available Increase Amount ” means, as of any date of determination, an amount equal to the result of (a) \$10,000,000 minus (b) the aggregate principal amount of Increases to the Revolver Commitments previously made pursuant to Section 2.15 of this Agreement.

“ Bank Product ” means any financial accommodation extended to Borrower or its Subsidiaries by a Bank Product Provider (other than pursuant to this Agreement) including: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH Transactions, (f) cash management, including controlled disbursement, accounts or services, or (g) 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 in an amount determined by Agent as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations.

“ Bank Product Obligations ” means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by Borrower or its Subsidiaries to any Bank Product Provider pursuant to or evidenced by the Bank Product Agreements 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 such amounts that Borrower or its Subsidiaries are obligated to reimburse to Agent or any member of the Lender Group as a result of Agent or such member of the Lender Group purchasing participations from, or executing indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to Borrower or its Subsidiaries.

“ Bank Product Provider ” means any Person that at the time it enters into a Bank Product Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Bank Product Agreement.

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

“ Base LIBOR Rate ” means a rate per annum, rounded upwards, if necessary, to the nearest 1/16 of 1.00%, equal to the rate of interest which is identified and normally published by Bloomberg Professional Service page USD-LIBOR-BBA (BBAM) as the offered rate for loans in United States dollars for the applicable Interest Period; provided that, if the Base LIBOR Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The rate is set by the ICE Benchmark Administration or any successor determining administrator as

of 11:00 a.m. (London time) on the second Business Day preceding the first day of each Interest Period. If Bloomberg Professional Service (or another nationally-recognized rate reporting source acceptable to the Agent) no longer reports such rate or the Agent determines in good faith that the rate so reported no longer accurately reflects the rate available to the Agent in the London Interbank Market or if such index no longer exists or if page USD-LIBOR-BBA (BBAM) no longer exists or accurately reflects the rate available to the Agent in the London Interbank Market, "Base LIBOR Rate" shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Agent in its discretion.

"Base Rate" means the greatest of (a) the Federal Funds Rate *plus* 0.50%, (b) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 1 month and shall be determined on a daily basis), *plus* 1 percentage point, and (c) the rate most recently announced by Agent at its principal office in Los Angeles, California as its "Prime Rate", with the understanding that the "prime rate" is one of Agent'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 Agent may designate.

"Base Rate Loan" means the portion of the Advances that bears interest at a rate determined by reference to the Base Rate.

"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.

"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).

"Books" means all of Borrower's and its Subsidiaries' now owned or hereafter acquired books and records (including all of their Records indicating, summarizing, or evidencing their assets (including the Collateral) or liabilities, all of Borrower's and its Subsidiaries' Records relating to their business operations or financial condition, and all of their goods or General Intangibles related to such information).

"Borrower" has the meaning set forth in the preamble to this Agreement.

"Borrower Collateral" means all of Borrower's now owned or hereafter acquired right, title, and interest in and to each of the following:

- (a) all of its Accounts,
- (b) all of its Books,
- (c) all of its commercial tort claims described on Schedule 5.7(d),
- (d) all of its Deposit Accounts,

- (e) all of its Equipment,
- (f) all of its General Intangibles,
- (g) all of its Inventory,
- (h) all of its Investment Property (including all of its securities and Securities Accounts),
- (i) all of its Negotiable Collateral,
- (j) all of its Supporting Obligations,

(k) money or other assets of Borrower that now or hereafter come into the possession, custody, or control of any member of the Lender Group, and

(l) the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the foregoing, and any and all Accounts, Books, Deposit Accounts, Equipment, General Intangibles, Inventory, Investment Property, Negotiable Collateral, Real Property, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, or any portion thereof or interest therein, and the proceeds thereof; provided that “Borrower Collateral” shall not include the Excluded Property; provided, further, that if and when any property shall cease to be Excluded Property, “Borrower Collateral” shall include such property and a Lien on and security interest in such property shall be deemed granted therein.

“Borrowing” means a borrowing hereunder consisting of Advances made on the same day by the Lenders (or Agent on behalf thereof), or by Agent in the case of an Agent Advance.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of California, except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term “Business Day” also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

“Canadian Subsidiary” means Professor Connors Canada, Inc., a company organized under the laws of the province of Ontario.

“Canadian Subsidiary Dissolution” means any of the consolidation, combination or merger of the Canadian Subsidiary with and into Borrower or the liquidation, wind up, dissolution or other similar transaction reasonably approved by the Agent, of the Canadian Subsidiary (in each case, including any similar transaction under local law governing of such Subsidiary); provided, that if the aggregate Net Cash Proceeds received from all such transactions are in an amount greater than \$1,000,000, the remaining assets of the Canadian Subsidiary (if any) and any proceeds of any of the foregoing shall be transferred to Borrower.

“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) interest capitalized during such period, (b) any expenditure described above to the extent such expenditure is part of the aggregate amounts payable as consideration for any Permitted Acquisition consummated during or prior to such period, (c) to the extent permitted by this Agreement, a reinvestment of the Net Cash Proceeds of any Disposition by Borrower or any of its Subsidiaries, (d) expenditures of proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and the Subsidiaries, (e) expenditures that are accounted for as capital expenditures of such person and that actually are paid for by, or for which the Borrower or any Subsidiary receives reimbursement in cash from, a third party and for which none of the Borrower or any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other person (whether before, during or after such period), and (f) other expenditures that Agent determines in its discretion to exclude from this definition of “Capital Expenditures”.

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

“Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP. Notwithstanding anything else set forth herein, any lease that was or would have been treated as an operating lease under GAAP as in effect on the Restatement Effective Date that would be treated as a capital lease solely as a result of a change in GAAP after the Restatement Effective Date shall always be treated as an operating lease for all purposes and at all times under this Agreement.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 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 Investor 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 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, and (f) Investments in money market 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 set forth in Section 2.7(a).

“Cash Management Agreements” means those certain cash management agreements, in form and substance reasonably satisfactory to Agent, each of which is among Borrower or one of its Subsidiaries, Agent, and one of the Cash Management Banks.

“Cash Management Bank” has the meaning set forth in Section 2.7(a).

“CFC” means a controlled foreign corporation (as that term is defined in the IRC).

“Change of Control” means:

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

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

“Change in Law” means the occurrence after the date of the Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided that notwithstanding anything in the 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.

“Chillers” means a refrigerated unit out of which Borrower’s products are sold.

“Code” means the California Uniform Commercial Code, as in effect from time to time; provided, however, , that in the event that, by reason of mandatory provisions of law, any

or all of the attachment, perfection, priority, or remedies with respect to Agent's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of California, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies.

"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.

"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 Borrower's or its Subsidiaries' Books, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

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

"Commercial Tort Claim Assignment" has the meaning set forth in Section 4.4(b).

"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 14.1.

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

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 delivered by the chief financial officer of Borrower to Agent.

"Consolidated Funded Indebtedness" means, with respect to any Person at any date, all Indebtedness for borrowed money of such Person, determined on a consolidated basis in accordance with GAAP (other than Subordinated Debt and Permitted Preferred Stock), including, in any event, but without duplication, with respect to Borrower and its Subsidiaries, the Advances, Purchase Money Indebtedness, and the amount of their Capitalized Lease Obligations, in each case exclusive of Indebtedness owed by one Loan Party to another Loan Party and any Indebtedness in respect of any of the foregoing.

"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), including without limitation, that certain Deposit Account Control Agreement, dated as of May 18, 2015, among the Borrower, the Agent and Bank of

America, N.A., in each case, as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance to the terms thereof and hereof.

“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.

“Daily Revolver Unused Line Fee” means, as of any date, the product of (a) the difference between (i) the aggregate amount of Revolver Commitments on such date minus (ii) the Revolver Usage on such date times (b) the Unused Line Fee Percentage for such date (calculated in accordance with the provisions of Section 2.11(b)).

“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 fund any amounts required to be funded by it under the Agreement on the date that it is required to do so under the Agreement (including the failure to make a required payment in connection with a Letter of Credit Disbursement), (b) notified the Borrower, Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under the Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit, (d) failed, within 1 Business Day after written request by Agent, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under the Agreement, (e) otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it under the Agreement on the date that it is required to do so under the Agreement, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

“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.

“Designated Account Bank” has the meaning ascribed thereto on Schedule D-1.

“ Disbursement Letter ” means an instructional letter executed and delivered by Borrower to Agent regarding the extensions of credit to be made on the Restatement Effective Date, the form and substance of which is reasonably satisfactory to Agent.

“ Disposition ” means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person, whether voluntary or involuntary and including any casualty losses or condemnations or other loss or destruction of any property of Borrower or any of its Subsidiaries.

“ Distribution ” has the meaning ascribed thereto in Section 7.10 .

“ Dollars ” or “ \$ ” means United States dollars.

“ Eligible Equipment ” means (a) the purchase of refrigerators, and (b) the purchase of Equipment to be used at new or existing production facilities of Borrower.

“ Environmental Actions ” means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other 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, including the Comprehensive Environmental Response Compensation and Liability Act, 42 USC §9601 *et seq.* ; the Resource Conservation and Recovery Act, 42 USC §6901 *et seq.* ; the Federal Water Pollution Control Act, 33 USC §1251 *et seq.* ; the Toxic Substances Control Act, 15 USC §2601 *et seq.* ; the Clean Air Act, 42 USC §7401 *et seq.* ; the Safe Drinking Water Act, 42 USC §3803 *et seq.* ; the Oil Pollution Act of 1990, 33 USC §2701 *et seq.* ; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 USC §11001 *et seq.* ; the Hazardous Material Transportation Act, 49 USC §1801 *et seq.* ; and the Occupational Safety and Health Act, 29 USC §651 *et seq.* (to the extent it regulates occupational exposure to Hazardous Materials); any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

“ Environmental Liabilities and Costs ” 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 and Costs.

“ Equipment ” means equipment (as that term is defined in the Code) and includes machinery, machine tools, motors, furniture, furnishings, fixtures, vehicles (including motor vehicles), computer hardware, tools, parts, and goods (other than consumer goods, farm products, or Inventory), wherever located, including all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing.

“ 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).

“ Event of Default ” has the meaning set forth in Section 8.

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

“ Excluded Deposit Account ” means a deposit account used solely for (i) 401(k) or other employee benefit plans, (ii) tax deposits, (iii) trust or escrow or fiduciary accounts, (iv) petty cash accounts or (v) zero balance accounts.

“ Excluded Hedge Obligations ” means, with respect to any Guarantor, any Hedge Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest pursuant to the Loan Documents to secure, such Hedge Obligation (or any guarantee thereof) is or would otherwise have become illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 17.10 hereof and any other “keepwell, support or other agreement” for the benefit of such Loan Party and any and all guarantees of such Loan Party’s Hedge Obligations by other Loan Parties) at the time the Guaranty of such Guarantor or the grant of such security

interest would otherwise have become effective with respect to such related Hedge Obligation. If a Hedge Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Hedge Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Property” means (i) voting Stock of any CFC, solely to the extent that such Stock represents more than 65% of the outstanding voting Stock of such CFC, (ii) any rights or interest in any contract, lease, permit, license, or license agreement covering real or personal property of Borrower if under the terms of such contract, lease, permit, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or Lien therein is prohibited as a matter of law or under the terms of such contract, lease, permit, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained (provided, that, (A) the foregoing exclusions of this clause (ii) shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is unenforceable under Section 9-406, 9-407, 9-408, or 9-409 of the Code or other applicable law, or (2) to apply to the extent that any consent or waiver has been obtained that would permit Agent’s security interest or Lien notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement and (B) the foregoing exclusions of clauses (i) and (ii) shall in no way be construed to limit, impair, or otherwise affect any of Agent’s, any other member of the Lender Group’s or any Bank Product Provider’s continuing security interests in and Liens upon any rights or interests of any Borrower in or to (1) monies due or to become due under or in connection with any described contract, lease, permit, license, license agreement, or Stock (including any Accounts or Stock), or (2) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, license agreement, or Stock) and (iii) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law, provided that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall not be considered Excluded Property.

“Fee Letter” means that certain Amended and Restated Fee Letter, dated as of even date herewith, between Borrower and Agent, as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance to the terms thereof and hereof.

“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 any current or future regulations or official interpretations thereof.

“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 arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New

York, or, if such rate is not so published for any day 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.

“ Fixed Charges ” means with respect to Borrower and its Subsidiaries for any period, the sum, without duplication, of (a) Interest Expense and (b) principal payments required to be paid during such period in respect of Indebtedness, which, in the case of the Revolving Loans, shall be deemed to be the Imputed Amortization.

“ Fixed Charge Coverage Ratio ” means, with respect to Borrower and its Subsidiaries for any period, the ratio of (i) TTM EBITDA for such period *minus* the sum of (A) Maintenance Capital Expenditures made (to the extent not already incurred in a prior period) or incurred during such period *plus* (B) all federal, state, and local income taxes paid in cash during such period, *plus* (C) all Distributions made during such period, to (ii) Fixed Charges for such period.

“ Funding Date ” means the date on which a Borrowing occurs.

“ Funding Losses ” has the meaning set forth 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.

“ General Intangibles ” means general intangibles (as that term is defined in the Code), including payment intangibles, contract rights, rights to payment, rights arising under common law, statutes, or regulations, choses or things in action, goodwill, patents, trade names, trade secrets, trademarks, servicemarks, copyrights, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, infringement claims, computer programs, information contained on computer disks or tapes, software, literature, reports, catalogs, insurance premium rebates, tax refunds, and tax refund claims, and any other personal property other than Accounts, Deposit Accounts, goods, Investment Property, and Negotiable Collateral.

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

“ Governmental Authority ” means 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.

“ Guarantors ” means each Subsidiary of Borrower that executes, or otherwise becomes a party to, a Guaranty, including pursuant to the provisions of Section 6.15 of this Agreement, and “ Guarantor ” means any one of them.

“ Guarantor Security Agreement ” means one or more security agreements executed and delivered by each Guarantor in favor of Agent, in each case, in form and substance reasonably satisfactory to Agent, including without limitation, that certain Guarantor Security

Agreement, dated as of October 5, 2016, by and between FP Foods Realty PA, LLC, a Delaware limited liability company, and the Agent.

“Guaranty” means that certain general continuing guaranty executed and delivered by each Guarantor in favor of Agent, in form and substance reasonably satisfactory to Agent, including without limitation, that certain General Continuing Guaranty, dated as of October 5, 2016, by FP Foods Realty PA, LLC, a Delaware limited liability company, in favor of the Agent.

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity”, (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

“Hedge Agreement” means any and all agreements or documents now existing or hereafter entered into by Borrower or any of its Subsidiaries that provide for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging Borrower’s or any of its Subsidiaries’ exposure to fluctuations in interest or exchange rates, loan, credit exchange, security, or currency valuations or commodity prices.

“Hedge Obligations” means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of a Borrower or its Subsidiaries arising under, owing pursuant to, or existing in respect of any Hedge Agreements.

“Holdout Lender” has the meaning set forth in Section 15.2(a).

“Imputed Amortization” means, as of any date of determination, an amount equal to the aggregate principal balance of Revolver Usage on such date *divided* by 7.

“Increase” shall have the meaning ascribed thereto in Section 2.15.

“Increase Date” shall have the meaning ascribed thereto in Section 2.15.

“Increase Joinder” shall have the meaning ascribed thereto in Section 2.15.

“Indebtedness” means (a) all obligations for borrowed money (and Prohibited Preferred Stock), (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, interest rate swaps, 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) all obligations to pay the deferred purchase price of assets (other than trade payables, deferred rent, taxes or compensation incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all Hedge Obligations, 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.

“Indemnified Liabilities” has the meaning set forth in Section 11.3.

“Indemnified Person” has the meaning set forth in Section 11.3.

“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.

“Installed Store” means a store or other place of business not owned, leased or operated by a Loan Party or any of its Affiliates in which Borrower’s products are maintained and sold.

“Intercompany Subordination Agreement” means that certain Amended and Restated Intercompany Subordination Agreement, dated as of November 13, 2014, executed and delivered by the Borrower and each of its Subsidiaries and Agent, as supplemented by (i) that certain Joinder Agreement, dated as of October 5, 2016, by and among FP Foods Realty PA, LLC, a Delaware limited liability company, the Borrower and the Agent and (ii) that certain Joinder Agreement, dated as of even date herewith, by and among Freshpet Europe LTD, a United Kingdom private limited company, the Borrower and the Agent, and as the same may be further amended, restated, supplemented, or otherwise modified from time to time in accordance to the terms thereof and hereof.

“Interest Expense” means, for any period, the aggregate of the cash interest expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“Interest Period” means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Base Rate Loan to a LIBOR Rate Loan) and ending 1, 2, 3 or 6 months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) 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, (d) 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, 2, or 3 months after the date on which the Interest Period began, as applicable and (e) Borrower may not elect an Interest Period with respect to any Advances which will end after the Revolver Maturity Date.

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

“ Investment ” means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, or 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), purchases or other 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.

“ Investment Property ” means investment property (as that term is defined in the Code).

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

“ Issuing Lender ” means CNB 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.

“ L/C Disbursement ” means a payment made by the Issuing Lender pursuant to a Letter of Credit.

“ Lender ” and “ Lenders ” have the respective meanings set forth in the preamble to this Agreement, and shall include any other Person made a party to this Agreement in accordance with the provisions of Section 14.1.

“ Lender Group ” means, individually and collectively, each of the Lenders (including the Issuing Lender) and Agent.

“ Lender Group Expenses ” means all (a) documented 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, (b) fees or charges paid or incurred by Agent in connection with the Lender Group’s transactions with Borrower or its Subsidiaries, 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, the copyright office, or the department of motor vehicles), 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 this Agreement), real estate surveys, real estate title policies and endorsements, and environmental examinations, (c) costs and expenses incurred by

Agent in the disbursement of funds to Borrower or other members of the Lender Group (by wire transfer or otherwise), (d) charges paid or incurred by Agent resulting from the dishonor of checks, (e) documented reasonable costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or 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, (f) documented audit fees and expenses of Agent related to audit examinations of the Books to the extent of the fees and charges (and up to the amount of any limitation) contained in this Agreement, (g) documented reasonable costs and expenses of third party claims or any other suit paid or incurred by the Lender Group in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or the Lender Group's relationship with Borrower or any its Subsidiaries, (h) Agent's and each Lender's documented reasonable costs and expenses (including attorneys fees of one primary counsel and one local counsel in each relevant jurisdiction) incurred in advising, structuring, drafting, reviewing, administering, syndicating, or amending the Loan Documents, and (i) Agent's and each Lender's documented reasonable costs and expenses (including 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 Borrower or its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning 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 ” has the meaning set forth in Section 2.12(a).

“ Letter of Credit Collateralization ” means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify that the Letter of Credit Fees and all commissions, fees, charges and expenses provided for in Section 2.12(d) of this Agreement (including any fronting fees) will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of the Revolving Lenders in an amount equal to 105% of the then existing Letter of Credit Usage, (b) delivering to Agent documentation executed by all beneficiaries under the Letters of Credit, in form and substance reasonably satisfactory to Agent and Issuing 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 Exposure ” means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the Letter of Credit Usage on such date.

“ Letter of Credit Usage ” means, as of any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit.

“ Leverage Ratio ” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness of Borrower and its Subsidiaries as of such date of determination to (b) TTM EBITDA of Borrower and its Subsidiaries as of such date of determination.

“ LIBOR Deadline ” has the meaning set forth in Section 2.13(b)(i).

“ LIBOR Notice ” means a written notice in the form of Exhibit L-1.

“ LIBOR Option ” has the meaning set forth in Section 2.13(a).

“ LIBOR Rate ” means, for each Interest Period for each LIBOR Rate Loan, the rate per annum determined by Agent (rounded upwards, if necessary, to the next 1/16th of one percent) by *dividing* (a) the Base LIBOR Rate for such Interest Period, by (b) 100% *minus* the Reserve Percentage. The LIBOR Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

“ LIBOR Rate Loan ” means each portion of an Advance that bears interest at a rate determined by reference to the LIBOR Rate.

“ Lien ” means any interest in an asset securing an obligation owed to, or a claim by, any Person other than the owner of the asset, irrespective of whether (a) such interest is based on the common law, statute, or contract, (b) such interest is recorded or perfected, and (c) such interest is contingent upon the occurrence of some future event or events or the existence of some future circumstance or circumstances. Without limiting the generality of the foregoing, the term “Lien” includes the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, deposit arrangement, security agreement, conditional sale or trust receipt, or from a lease, consignment, or bailment for security purposes and also includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting Real Property. For the avoidance of doubt, the term “Lien” shall not be deemed to include any nonexclusive intellectual property license.

“ Loan Account ” has the meaning set forth in Section 2.10.

“ Loan Documents ” means this Agreement, the Master Reaffirmation Agreement, the Cash Management Agreements, the Control Agreements, the Fee Letter, any Guarantor Security Agreement, each Guaranty, the Intercompany Subordination Agreement, the Mortgages, the Stock Pledge Agreement, the Trademark Security Agreement, the Warrant Agreement, any note or notes executed by Borrower in connection with this Agreement and payable to a Lender, and any other agreement entered into, now or in the future, by Borrower and Agent or any Lender in connection with either this Agreement or the Existing Loan Agreement.

“ Loan Parties ” means Borrower and each Guarantor, and “ Loan Party ” means any one of them.

“ Maintenance Capital Expenditures ” means, for any period, the *sum* of (without duplication) (a) Capital Expenditures made during such period on account of the maintenance of the Equipment of Borrower and its Subsidiaries, and (b) the *higher* of (i) actual amount spent on Capital Expenditures made during such period on account of maintenance of the Chillers and (ii) Capital Expenditures made during such period on account of maintenance of the Chillers, calculated as the product of (x) the total number of Installed Stores as of the end of such period *multiplied* by (y) \$16.

“ Margin Stock ” means “margin stock” as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States (or any successor) as in effect from time to time.

“ Master Reaffirmation Agreement ” means that certain Master Reaffirmation Agreement, dated as of even date herewith, executed and delivered by Borrower, each of its Subsidiaries, and Agent, as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance to the terms thereof and hereof.

“ Material Adverse Change ” means (a) a material adverse change in the business, operations, results of operations, assets, liabilities or condition (financial or otherwise) of Borrower and its Subsidiaries, taken as a whole, (b) a material impairment of Borrower’s and its Subsidiaries’ ability to perform their respective 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 Contract ” means, with respect to any Person, (a) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of \$2,500,000 or more (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 60 days’ notice without penalty or premium), and (b) all other contracts or agreements, the loss or termination of which could reasonably be expected to result in a Material Adverse Change.

“ Maximum Revolver Amount ” means \$30,000,000, increased by the amount of any Increase of the Revolver Commitments made in accordance with Section 2.15 hereof.

“ Mortgages ” means, individually and collectively, (i) that certain Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of October 5, 2016, made by and from FP Foods Realty PA, LLC, a Delaware limited liability company, to Agent, and recorded with the Recorder of Deeds, Northampton County, Pennsylvania, in Book 2016-1, Starting Page 231021, as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance to the terms thereof and hereof, (ii) that certain Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of October 5, 2016, made by and from Borrower to Agent, and recorded with the Recorder of Deeds, Northampton County, Pennsylvania, in Book

2016-1, Starting Page 231055, in each case, as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance to the terms thereof and hereof, and (iii) any other mortgages, deeds of trust, or deeds to secure debt, executed and delivered by Borrower or its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

“ Negotiable Collateral ” means letters of credit, letter of credit rights, instruments, promissory notes, drafts, documents, and chattel paper (including electronic chattel paper and tangible chattel paper).

“ Net Cash Proceeds ” means, (i) with respect to any Disposition by any Person or any of its Subsidiaries, the amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary, in connection therewith after deducting therefrom only (A) the amount of any Indebtedness secured by any Permitted Lien on any asset (other than Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such Disposition (other than Indebtedness under this Agreement), (B) reasonable expenses related thereto incurred by such Person or such Subsidiary in connection therewith, (C) transfer taxes paid to any taxing authorities by such Person or such Subsidiary in connection therewith, and (D) net income taxes to be paid in connection with such Disposition (after taking into account any tax credits or deductions and any tax sharing arrangements) and (ii) with respect to the issuance or incurrence of any Indebtedness by any Person or any of its Subsidiaries, or the sale or issuance by any Person or any of its Subsidiaries of any shares of its Stock, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary in connection therewith, after deducting therefrom only (A) reasonable expenses related thereto incurred by such Person or such Subsidiary in connection therewith, (B) transfer taxes paid by such Person or such Subsidiary in connection therewith and (C) net income taxes to be paid in connection therewith (after taking into account any tax credits or deductions and any tax sharing arrangements); in each case of clause (i) and (ii) to the extent, but only to the extent, that the amounts so deducted are properly attributable to such transaction or to the asset that is the subject thereof.

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

“ 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, premiums, liabilities (including all amounts charged to Borrower’s Loan Account pursuant hereto), 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), lease payments, guaranties, covenants, and duties of any kind and description 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 Lender Group Expenses that Borrower is required to pay or reimburse by the Loan Documents, by law, or otherwise, and (b) all Bank Product Obligations ; provided that, notwithstanding the foregoing, the Obligations shall exclude any Excluded Hedge Obligations. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

“ Originating Lender ” has the meaning set forth in Section 14.1(e) .

” Overadvance ” has the meaning set forth in Section 2.4(e)(i) .

“ Participant ” has the meaning set forth in Section 14.1(e) .

“ Permitted Acquisition ” means any Acquisition so long as:

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

(b) Borrower 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, Borrower and its Subsidiaries would have been in compliance with the financial covenants in Section 7.18 of the Agreement for the 4 fiscal quarter period ended immediately prior to the proposed date of consummation of such proposed Acquisition,

(c) Borrower has provided Agent with its due diligence package relative to the proposed Acquisition, consisting of, to the extent reasonably available, forecasted balance sheets, profit and loss statements, and cash flow statements of the Person or assets to be acquired, together with appropriate supporting details and a statement of underlying assumptions for the 1 year period following the date of the proposed Acquisition, on a quarter by quarter basis),

(d) [Intentionally Omitted],

(e) Borrower has provided Agent with written notice of the proposed Acquisition at least 5 Business Days prior to the anticipated closing date of the proposed Acquisition, copies of the acquisition agreement and other material documents relative to the proposed Acquisition, which agreement and documents must be reasonably acceptable to Agent,

(f) 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 a business reasonably related thereto,

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

(h) the subject assets or Stock, as applicable, are being acquired directly by Borrower or a Subsidiary, and, in connection therewith, such Borrower or Subsidiary shall have provided such documents and instruments as requested are required by Section 6.15 of the Agreement), and

(i) the consideration payable in respect of the proposed Acquisition shall be composed solely of (i) common Stock of Borrower, (ii) proceeds of equity contributions made to the Borrower by a Permitted Holder for the purpose of funding, in whole or in part, a proposed Acquisition, or (iii) Subordinated Debt permitted under this Agreement.

“ Permitted Discretion ” means a determination made in the exercise of reasonable (from the perspective of a secured lender) business judgment.

“ Permitted Dispositions ” means (a) sales or other dispositions of Equipment that is substantially worn, damaged, or obsolete in the ordinary course of business or no longer used or useful, (b) sales of Inventory to buyers in the ordinary course of business, (c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents, (d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business, or the lapse of intellectual property that is immaterial or no longer used in or necessary to its business, (e) any Dispositions of any property by any Subsidiary to the Borrower to the extent (i) any resulting Investment constitutes a Permitted Investment, (ii) the foregoing constitutes a distribution permitted pursuant to Section 7.10, or (iii) the foregoing constitutes a transaction permitted by Section 7.3, (f) any Disposition or issuance by the Borrower of its own equity interests to the extent that any such issuance does not result in a Change of Control, (g) any other Disposition of property of Borrower; provided that the aggregate consideration received during any fiscal year of the Borrower for all such Dispositions shall not exceed \$1,000,000, (h) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such similar property, (i) Dispositions of accounts receivables in connection with the collection or compromise thereof in the ordinary course of business, (j) the granting of a Permitted Lien, and (k) Dispositions resulting from property loss events or takings and transfers of property that has suffered a property loss event or a taking (constituting a total loss or constructive total loss of such property) upon receipt of the Net Cash Proceeds of such property loss event or taking.

“ Permitted Holders ” means the Persons identified on Schedule P-2 hereto.

“ 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) loans and advances to officers, managers, directors and employees of any Loan Party in the ordinary course of business for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes (including employee payroll advances), (e) Investments resulting from entering into any Hedge Agreements, (f) 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, (g) Permitted Acquisitions, (h) Investments by a Loan Party in another Loan Party, (i) other Investments in an aggregate outstanding amount not to exceed \$1,000,000 at any time, (j) any Investment owned by a Person at the time such Person is acquired and becomes a Subsidiary pursuant to a Permitted Acquisition; provided that such Investment was not made in connection with or in contemplation of such Permitted Acquisition, (k) any Investments made from casualty insurance proceeds in connection with the replacement, substitution, restoration or repair of assets on account of an insurable event to the extent such assets were covered by casualty insurance maintained by the Borrower or a Subsidiary, (l) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment, in each such case in the ordinary course of business, and (m) any other Investments (other than an Investment that constitutes an Acquisition) made with the proceeds of equity interests issued by the Borrower to a Permitted Holder. For purposes of covenant compliance, the amount of any Permitted Investment shall be the amount actually invested less cash returns on such Investment.

“ Permitted Liens ” means (a) Liens held by Agent, (b) Liens for unpaid taxes that either (i) are not yet delinquent, or (ii) do not constitute an Event of Default hereunder and are the subject of Permitted Protests, (c) Liens set forth on Schedule P-1, (d) the interests of lessors under operating leases, (e) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as such Lien attaches only to the asset purchased or acquired and the proceeds thereof, (f) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent by more than 30 days, or (ii) are the subject of Permitted Protests, (g) Liens on amounts deposited in connection with obtaining worker’s compensation or other unemployment insurance, (h) 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, (i) Liens on amounts deposited as security for surety or appeal bonds in connection with obtaining such bonds in the ordinary course of business, (j) Liens resulting from any judgment or award that is not an Event of Default hereunder, (k) with respect to any Real Property, easements, rights of way, and zoning restrictions that do not materially interfere with or impair the use or operation thereof and (l) Liens securing Subordinated Debt.

“ Permitted Preferred Stock ” means and refers to any Preferred Stock issued by the Borrower (and not by one or more of its Subsidiaries) that is not Prohibited Preferred Stock.

“ 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 taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on the Books in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Borrower or any of its Subsidiaries, as applicable, in good faith, and (c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of the Agent’s Liens.

“ Permitted Purchase Money Indebtedness ” means, as of any date of determination, Purchase Money Indebtedness that does not constitute Subordinated Debt and that is incurred after the Restatement Effective Date in an aggregate amount outstanding at any one time not in excess of \$2,000,000, *plus* any Purchase Money Indebtedness used to finance the purchase of Chillers.

“ Post-Increase Revolver Lenders ” has the meaning specified therefor in Section 2.15 of this Agreement.

“ Pre-Increase Revolver Lenders ” has the meaning specified therefor in Section 2.15 of this Agreement.

“ Preferred Stock ” means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

“ Prohibited Preferred Stock ” means any Preferred Stock that by its terms is mandatorily redeemable or subject to any other payment obligation (including any obligation to pay dividends, other than dividends of shares of Preferred Stock of the same class and series payable in kind or dividends of shares of common stock) on or before a date that is less than 6 months after the Revolver Maturity Date, or, on or before the date that is less than 6 months after the then extant Revolver Maturity Date, is redeemable at the option of the holder thereof for cash or assets or securities (other than distributions in kind of shares of Preferred Stock of the same class and series or of shares of common stock).

“ 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, (c) cash flow statements, and (d) statement of projected capital expenditures, all prepared on a basis consistent with Borrower’s historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

“ Pro Rata Share ” means, as of any date of determination:

(a) with respect to a Lender's obligation to make Advances and 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 aggregate outstanding principal amount of such Lender's Advances by (z) the aggregate 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 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 aggregate outstanding principal amount of such Lender's Advances by (z) the aggregate outstanding principal amount of all Advances,

(c) [Intentionally Omitted],

(d) [Intentionally Omitted],

(e) with respect to all other matters as to a particular Lender (including the indemnification obligations arising under Section 16.7), the percentage obtained by dividing (i) (x) prior to the termination or the reduction to zero of the Revolver Commitments, such Lender's Revolver Commitment, or (y) from and after the termination or the reduction to zero of the Revolver Commitments, the sum of 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 (ii) (x) prior to the termination or the reduction to zero of the Revolver Commitments, the aggregate amount of Revolver Commitments of all Lenders, or (y) from and after the termination or the reduction to zero of the Revolver Commitments, the sum of outstanding principal amount of all Advances *plus* the aggregate amount of the Risk Participation Liability with respect to all outstanding Letters of Credit.

“ Purchase Money Indebtedness ” means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 90 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof.

“ Qualified ECP Guarantor ” shall mean, in respect of any Hedge Obligation, each Guarantor with total assets exceeding \$10,000,000 at the time the relevant Guaranty or grant of the relevant security interest becomes effective with respect to such Hedge Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Property” means any estates or interests in real property now owned or hereafter acquired by Borrower or any of its Subsidiaries and the improvements thereto .

“Real Property Collateral” means the Real Property identified on Schedule R-1 and any Real Property hereafter acquired by Borrower or any of its Subsidiaries.

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

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

“Replacement Lender” has the meaning set forth in Section 15.2(a).

“Report” has the meaning set forth in Section 16.17.

“Required Lenders” means, at any time, (a) if there are more than two Lenders who are not Affiliates of one another, at least two Lenders who are not Affiliates of one another whose aggregate Pro Rata Shares (calculated under clause (e) of the definition of Pro Rata Shares) exceed 50%, and (b) otherwise, all of the Lenders.

“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.

“Restatement Effective Date” means September 21, 2017.

“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 14.1.

“Revolver Maturity Date” means September 21, 2020.

“Revolver Obligations” all Obligations in respect of or relating to the Advances, Letters of Credit and Bank Product Obligations (including principal, interest, premiums, if any, fees, costs, and expenses (including Lender Group Expense s) in respect thereof).

“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.

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

“Risk Participation Liability” means, as to each Letter of Credit, all reimbursement obligations of Borrower to the Issuing Lender with respect to such Letter of Credit, 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 with respect thereto 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.

“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).

“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.

“Specified Loan Party”: any Loan Party that is not then a Qualified ECP Guarantor.

“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).

“Stock Pledge Agreement” means that certain Amended and Restated Stock Pledge Agreement, dated as of November 13, 2014, executed and delivered by Borrower to Agent with respect to the pledge of the Stock owned by Borrower, as supplemented by that certain (i) Joinder Agreement, dated as of October 5, 2016, by and among FP Foods Realty PA, LLC, a Delaware limited liability company, the Borrower and the Agent, (ii) Pledged Interests Addendum, dated as of October 5, 2016, by the Borrower and (iii) Pledged Interests Addendum, dated as of March 8, 2017, by the Borrower, and as the same may be otherwise amended, restated, supplemented, or otherwise modified from time to time in accordance to the terms thereof and hereof.

“ Subordinated Debt ” means Indebtedness of Borrower that is on terms and conditions (including payment terms, interest rates, covenants, remedies, defaults and other material terms) satisfactory to the Agent and which (a) has been expressly subordinated in right of payment to all Obligations by the execution and delivery of a subordination agreement, in form and substance satisfactory to Agent and (b) if such Indebtedness is secured by a Lien, such Lien is expressly subordinated to the Liens granted to Lender by the execution and delivery of a subordination agreement, in form and substance satisfactory 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.

“ Supporting Obligation ” means a letter-of-credit right or secondary obligation that supports the payment or performance of an Account, chattel paper, document, General Intangible, instrument, or Investment Property.

“ Taxes ” has the meaning set forth in Section 16.11.

“ Trademark Security Agreement ” means that certain Second Amended and Restated Trademark Security Agreement, dated as of even date herewith, executed and delivered by Borrower and Agent, and any other trademark security agreement from time to time executed by Borrower and Agent, in form and substance reasonably satisfactory to Agent, in each case, as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance to the terms thereof and hereof.

“ TTM EBITDA ” means, as of any date of determination, Adjusted EBITDA of Borrower determined on a consolidated basis in accordance with GAAP, for the 12 month period most recently ended.

“ United States ” means the United States of America.

“ Unused Line Fee Percentage ” means, as of any date of determination, 0.30%.

“ Voidable Transfer ” has the meaning set forth in Section 17.6.

“ Warrant Agreement ” means that certain Common Stock Warrant Agreement dated as of October 5, 2006 by and between Borrower and CNB.

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 Restatement Effective 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 as of the date of this Agreement 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 Borrower and its Subsidiaries on a consolidated basis unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof, and (b) the term “unqualified opinion” as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, and (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit.

1.3 Code

. Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, 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 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. The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties. Any reference in this Agreement or in the other Loan Documents 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 to the satisfaction or repayment in full of the Obligations shall mean the repayment in full in cash (or cash collateralization in accordance with the terms hereof) of all Obligations other than contingent indemnification Obligations as to which no claim as been asserted and other than any Bank Product Obligations that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding and are not required to be repaid or cash collateralized pursuant to the provisions of this Agreement, and the termination of all 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 the other Loan Documents shall be satisfied by the transmission of a Record and any Record transmitted shall constitute a representation and warranty as to the accuracy and completeness of the information contained therein.

1.5 **Schedules and Exhibits**

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

2. **LOAN AND TERMS OF PAYMENT.**

2.1 **Revolver Advances**.

(a) Effective as of the Restatement Effective Date, all “Revolving Loans” (as defined in the Existing Loan Agreement) and any “Letters of Credit” (as defined in the Existing Loan Agreement) outstanding under the Existing Loan Agreement shall be deemed outstanding under this Agreement. All “LIBOR Rate Loans” (as defined in the Existing Loan Agreement) that are “Revolving Loans” (as defined in the Existing Loan Agreement) shall be “broken” immediately prior to the effectiveness of this Agreement and any “LIBOR Rate Loans” (as defined in the Existing Loan Agreement) that are “Revolving Loans” (as defined in the Existing Loan Agreement) that are outstanding immediately prior to the effectiveness of this Agreement shall be converted by the Borrower in accordance with the terms and conditions of the Credit Agreement. Effective as of the Restatement Effective Date, all “Capex Term Loans” (as defined in the Existing Loan Agreement) outstanding under the Existing Loan Agreement shall be converted to Revolving Loans hereunder. All “LIBOR Rate Loans” (as defined in the Existing Loan Agreement) that are “Capex Term Loans” (as defined in the Existing Loan Agreement) shall be “broken” immediately prior to the effectiveness of this Agreement.

(b) 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 additional 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 Maximum Revolver Amount less the Letter of Credit Usage.

(c) The Lenders with Revolver Commitments shall have no obligation to make additional Advances hereunder to the extent such additional Advances would cause the Revolver Usage to exceed the Maximum Revolver Amount.

(d) 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.

2.2 [**Intentionally Omitted** .]

2.3 **Borrowing Procedures**.

(a) **Procedure for Borrowing** . Each Borrowing shall be made by an irrevocable written request in substantially the form of Exhibit N-1 hereto (a “Notice of Borrowing”) by an Authorized Person delivered to Agent. In the case of a request for a Base

Rate Loan, such notice must be received by Agent no later than 10:00 a.m. (California time) on the Business Day prior to the date that is the requested Funding Date or, in the case of a request for a LIBOR Rate Loan, no later than 10:00 a.m. (California time) at least 3 Business Days prior to the date that is the requested Funding Date, in each case, specifying (i) the amount of such Borrowing, and (ii) the requested Funding Date, which shall be a Business Day. At Agent's election, in lieu of delivering the above-described written request, any Authorized Person may give Agent telephonic notice of such request by the required time (promptly confirmed in writing by the delivery of the Notice of Borrowing). In such circumstances, Borrower agrees that any such telephonic notice will be confirmed in writing within 24 hours of the giving of such telephonic notice, but the failure to provide such written confirmation shall not affect the validity of the request.

(b) [Intentionally Omitted .]

(c) **Making of Loans .**

(i) Promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), Agent shall notify the Lenders, not later than 1:00 p.m. (California time) on the Business Day immediately preceding the Funding Date applicable thereto, by telecopy, telephone, or other similar form of transmission, of the requested Borrowing. Each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. (California time) on the Funding Date applicable thereto. After Agent's receipt of the proceeds of such Advances, 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 Borrower's Designated Account; provided, however, that, subject to the provisions of Section 2.3(j), Agent shall not request any Lender to make, and no Lender shall have the obligation to make, any Advance if Agent shall have actual knowledge that (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 on or prior to the Restatement Effective Date or, with respect to any Borrowing after the Restatement Effective Date, prior to 9:00 a.m. (California time) on the date of such 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 on such date a corresponding amount. If and to the extent any Lender shall not have made its full amount available to Agent in immediately available funds and Agent in such circumstances has made available to Borrower such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by Agent to any Lender with respect to amounts owing under this subsection shall be conclusive, absent manifest error. If such amount is so made available, such payment to Agent shall constitute such Lender's Advance on the date of Borrowing 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. 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 such Funding Date, but no Lender shall 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) Defaulting Lenders

(i) Notwithstanding the provisions of Section 2.4(b), 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 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, (B) second, 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), (C) third, 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 (D) fourth, from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (J) of Section 2.4(b)(iii). Subject to the foregoing, Agent may hold and, in its Permitted 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 2.11(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero. This Section shall remain effective with respect to such 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(d) 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(d)(ii) shall be released to Borrower). The operation of this Section 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 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 repaid 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 the Risk Participation Liability) without any premium or penalty of any kind whatsoever; provided, however, 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(d) 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(d) shall control and govern.

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

(A) such Defaulting Lender's 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 the sum of all Non-Defaulting Lenders' Revolving Loan Exposures *plus* such Defaulting Lender's Letter of Credit Exposure does not exceed the total of all Non-Defaulting Lenders' Revolver Commitments;

(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 (or a longer period as Agent may reasonably agree) 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 the Issuing Lender;

(C) if Borrower cash collateralizes any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to this Section 2.3(d)(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(d)(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(d)(ii), then, without prejudice to any rights or remedies of the 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 the 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 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 Letter of Credit cannot be reallocated pursuant to this Section 2.3(d)(ii) or (y) the Issuing Lender has not otherwise entered into arrangements reasonably satisfactory to Issuing Lender and Borrower to eliminate or Issuing Lender's risk with respect to the Defaulting Lender's participation in Letters of Credit; and

(G) Agent may release any cash collateral provided by Borrower pursuant to this Section 2.3(d)(ii) to the Issuing Lender and the 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(a).

(e) **[Intentionally Omitted.]**

(f) **Agent Advances .**

(i) Agent hereby is authorized by Borrower and the Lenders, from time to time in Agent's sole discretion, (1) after the occurrence and during the continuance of a Default or an Event of Default, or (2) at any time that any of the other applicable conditions precedent set forth in Section 3 have not been satisfied, to make Advances to Borrower on behalf of the Lenders that Agent, in its Permitted Discretion deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations), or (C) 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 10 (any of the Advances described in this Section 2.3(f) shall be referred to as "Agent Advances"). Each Agent Advance shall be deemed to be an Advance hereunder, except that no such Agent Advance shall be eligible to be a LIBOR Rate Loan and all payments thereon shall be payable to Agent solely for its own account.

(ii) The Agent Advances shall be repayable on demand, secured by the Agent's Liens granted to Agent under the Loan Documents, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Advances that are Base Rate Loans.

(iii) Each Lender with a Revolver Commitment shall be obligated to settle with Agent for the amount of such Lender's Pro Rata Share of any Agent Advances made as permitted under this Section 2.3(f).

(g) **[Intentionally Omitted.]**

(h) **Notation** . Agent, as a non-fiduciary agent for Borrower, shall maintain a register showing the principal amount of the Advances, owing to each Lender, including the Agent Advances, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(i) **Lenders' Failure to Perform** . All Advances (other than Agent 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.

(j) **Optional Overadvances** . Any contrary provision of this Agreement notwithstanding, the Lenders hereby authorize Agent and Agent may, but is not obligated to, knowingly and intentionally, continue to make Advances to Borrower notwithstanding that an Overadvance exists or thereby would be created, so long as 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. The foregoing provisions are for the exclusive benefit of Agent and the Lenders and are not intended to benefit Borrower in any way. The Advances that are made pursuant to this Section 2.3(i) shall be subject to the same terms and conditions as any other Advance, except that they shall not be eligible for the LIBOR Option and the rate of interest applicable thereto shall be the rate applicable to Advances that are Base Rate Loans under Section 2.6(c) hereof without regard to the presence or absence of a Default or Event of Default.

(i) In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by the preceding paragraph, 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 paragraph. In the event Agent or any Lender disagrees over the 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.

(ii) Each Lender with a Revolver Commitment shall be obligated to settle with Agent 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(j), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses.

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 11:00 a.m. (California time) on the date specified herein. Any payment received by Agent later than 11:00 a.m. (California time) 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 herein with respect to Defaulting Lenders, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of Issuing Lender) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates.

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

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

- (A) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents, 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 Agent Advances until paid in full,
- (D) fourth, to pay the principal of all Agent 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) ninth, ratably, to pay interest accrued in respect of the Advances (other than Agent Advances) until paid in full,
- (H) tenth, ratably (i) 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, to the Bank Product Providers based upon amounts then certified by the applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Providers on account of Bank Product Obligations.
- (I) eleventh, to pay any other Obligations other than Obligations owed to Defaulting Lenders,
- (J) twelfth, ratably to pay any Obligations owed to Defaulting Lenders; and
- (K) thirteenth, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

Excluded Hedge Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with

respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

(iv) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive.

(v) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(iii) 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 or any other Loan Document.

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

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

(c) **Reduction of Revolver Commitments** . The Revolver Commitments shall terminate on the Revolver Maturity Date. Borrower may reduce the Revolver Commitments, without premium or penalty, to an amount (which may be zero) not less than the sum of (A) the Revolver Usage as of such date, *plus* (B) the principal amount of all Advances not yet made as to which a request has been given by Borrower under Section 2.3(a), *plus* (C) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrower pursuant to Section 2.12(a). Each such reduction shall be in an amount which is not less than \$1,000,000 (unless the Revolver Commitments are being reduced to zero and the amount of the Revolver Commitments in effect immediately prior to such reduction are less than \$5,000,000), shall be made by providing not less than 10 Business Days prior written notice to Agent, and shall be irrevocable. Once reduced, the Revolver Commitments may not be increased. Each such reduction of the Revolver Commitments shall reduce the Revolver Commitments of each Lender proportionately in accordance with its ratable share thereof.

(d) **Optional Prepayments of Advances** . Borrower may prepay the principal of any Advance at any time in whole or in part, without premium or penalty.

(e) **Mandatory Prepayments** .

(i) If, at any time or for any reason, the amount of Obligations owed by Borrower to Lender pursuant to Sections 2.1 is greater than the Dollar limitations set forth in Sections 2.1, (an “Overadvance”), Borrower immediately shall pay to Agent, in cash, 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). In addition, Borrower hereby promises to pay the Obligations (including principal, interest, fees, costs, and expenses) in Dollars in full to Agent as and when due and payable under the terms of this Agreement and the other Loan Documents.

(f) Application of Payments .

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

2.5 Promise to Pay; Promissory Notes.

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

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

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

(a) **Interest Rates** . Except as provided in clause (c) below, 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 LIBOR Rate Loan, at a per annum

rate equal to the LIBOR Rate *plus* the LIBOR Rate Margin, and (ii) if the relevant Obligation is a Base Rate Loan, 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), a Letter of Credit fee (the “Letter of Credit Fee”) (which fee shall be in addition to the fronting fees and commissions, other fees, charges and expenses set forth in Section 2.12(d)) that shall accrue at a *per annum* rate equal to the LIBOR Rate 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 election of Agent or the Required 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 2.00 percentage points above the per annum rate otherwise applicable hereunder, and

(ii) the Letter of Credit fee provided for above shall be increased to 2.00 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(d), or Section 2.13(a), (i) all interest, Letter of Credit fees, and all other fees payable hereunder shall be due and payable, in arrears, on the first day of each quarter at any time that Obligations or Commitments are outstanding, and (ii) all costs and expenses payable hereunder or under any of the other Loan Documents, and all Lender Group Expenses shall be due and payable on the earlier of (x) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first invoiced to Borrower or (y) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)). To the extent that such amounts are not otherwise paid when due, Borrower hereby authorizes Agent to obtain payment in respect of such interest and fees and all other amounts payable hereunder or pursuant to the other Loan Documents (as and when payable hereunder or under the other Loan Documents) by debiting the Designated Account in an amount equal to the amount thereof. 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 quarter, all interest accrued during the prior quarter on the Advances hereunder, (B) on the first day of each quarter, all Letter of Credit Fees accrued or chargeable hereunder during the prior quarter, (C) as and when incurred or accrued, all fees and costs provided for in Section 2.11 (a) or (d), (D) on the first day of each quarter, the Revolver Unused Line Fee accrued during the prior quarter 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) as and when incurred or accrued, the fronting fees and all commissions, other fees, charges and expenses provided for in Section 2.12(d), (G) as and when incurred or accrued, all other Lender Group Expenses, and (H) 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 LIBOR Rate Loans in accordance with the terms of this Agreement).

(e) **Computation** . All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year for the actual number of days elapsed (except in the case of Base Rate Loans, which shall be 365 days). 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.

2.7 Cash Management .

(a) Borrower shall and shall cause each of its Subsidiaries to (i) establish and maintain cash management services of a type and on terms reasonably satisfactory to Agent at one or more of the banks set forth on Schedule 2.7(a) (each, a “Cash Management Bank”), and shall request in writing and otherwise take such reasonable steps to ensure that all of its and its Subsidiaries’ Account Debtors forward payment of the amounts owed by them directly to such Cash Management Bank, 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 one of its Subsidiaries) into a bank account in Agent’s name (a “Cash Management Account”) at one of the Cash Management Banks; provided that (i) the Borrower may keep up to \$25,000 in the aggregate in accounts that are not subject to the foregoing and (ii) the requirements in this Section 2.7 or Section 4.7 shall not apply to Excluded Deposit Accounts.

(b) Each Cash Management Bank shall establish and maintain Cash Management Agreements with Agent and Borrower, 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 such Cash Management Account without further consent by Borrower or its Subsidiaries, as applicable, (ii) the Cash Management Bank has no rights of setoff or recoupment or any other claim against the 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) upon the instruction of Agent (an “ Activation Instruction ”), the Cash Management Bank will forward by daily sweep all amounts in the applicable Cash Management Account to the Agent’s Account. Agent agrees not to issue an Activation Instruction with respect to the Cash Management Accounts unless an Event of Default has occurred and is continuing at the time such Activation Instruction is issued.

(c) So long as no Default or 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; provided, however, that (i) such prospective Cash Management Bank shall be reasonably satisfactory to Agent, and (ii) prior to the time of the opening of such Cash Management Account, Borrower (or its Subsidiary, as applicable) and such prospective Cash Management Bank shall have executed and delivered to Agent a Cash Management Agreement. Borrower (or its Subsidiaries, as applicable) shall close any of its Cash Management Accounts (and establish replacement cash management accounts in accordance with the foregoing sentence) promptly and in any event within 30 days of notice from Agent (or such longer period as the Agent may reasonably agree; but in no event later than 60 days after such notice is given) that the creditworthiness of any Cash Management Bank is no longer acceptable in Agent’s reasonable judgment, or as promptly as practicable and in any event within 60 days of notice from Agent (or such longer period as the Agent may reasonably agree; but in no event later than 90 days after such notice is given) that the operating performance, funds transfer, or availability procedures or performance of the Cash Management Bank with respect to Cash Management Accounts or Agent’s liability under any Cash Management Agreement with such Cash Management Bank is no longer acceptable in Agent’s reasonable judgment.

(d) The Cash Management Accounts shall be cash collateral accounts subject to Control Agreements.

2.8 Crediting Payments

. The receipt of any payment item by Agent (whether from transfers to Agent by the Cash Management Banks pursuant to the Cash Management Agreements or otherwise) shall not be considered a payment on account unless such payment item is a wire transfer of immediately available federal 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 and interest shall be calculated accordingly. 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 11:00 a.m. (California time). If any payment item is received into the Agent’s Account on a non-Business Day or after 11:00 a.m. (California time) on a Business Day, 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 or Agent Advance 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 Agent Advances) made by Agent or the Lenders to Borrower or for Borrower’s account, the Letters of Credit issued 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 expenses, and Lender Group Expenses. In accordance with Section 2.8, 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 Bank. Agent shall render statements regarding the Loan Account to Borrower, including principal, interest, fees, and including an itemization of all charges and expenses constituting Lender Group Expenses owing, and such statements, 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 receipt thereof by Borrower, Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

2.11 **Fees**

. Borrower shall pay to Agent the following fees and charges, which fees and charges shall be non-refundable when paid (irrespective of whether this Agreement is terminated thereafter) and shall be apportioned among the Lenders in accordance with the terms of agreements between Agent and individual Lenders:

(a) **Fee Letter Fees** . As and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter,

(b) **Revolver Unused Line Fee** . Borrower shall pay to Agent, for the ratable amount of the Revolving Lenders, a revolver unused line fee (the “Revolver Unused Line Fee”), quarterly in arrears, on the first day of each quarter from and after the Restatement Effective Date up to the first day of the quarter prior to the date on which the Revolver Obligations are paid in full and the Revolver Commitments are terminated or are reduced to zero and on the date on which the Revolver Obligations are paid in full and the Revolver Obligations are terminated or are reduced to zero, in an amount equal to the result of the sum of the Daily Revolver Unused Line Fee for each day during such fiscal quarter.

(c) **[Intentionally Omitted .]**

(d) **Audit, Appraisal, and Valuation Charges** . Audit, appraisal, and valuation fees and charges shall consist of the actual charges paid or incurred by Agent if it elects to employ the services of one or more third Persons to perform financial audits of Borrower or its Subsidiaries, to establish electronic collateral reporting systems, to appraise the Collateral, or any portion thereof, or to assess Borrower’s or its Subsidiaries’ business valuation; provided, however, that so long as no Event of Default shall have occurred and be continuing,

Borrower shall not be obligated to reimburse Agent for more than 2 audits, appraisals or valuations during any calendar year.

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 Revolver Maturity Date, the Issuing Lender agrees to issue letters of credit for the account of Borrower (each, a “Letter of Credit”). By submitting a request to Issuing Lender for the issuance of a Letter of Credit, Borrower shall be deemed to have requested that Issuing Lender issue the requested Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be irrevocable and shall be made in writing by an Authorized Person and delivered to Issuing Lender via telefacsimile or other electronic method of transmission reasonably acceptable to Issuing Lender and reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance satisfactory to the Issuing Lender in its Permitted Discretion and shall specify (i) the amount of such Letter of Credit, (ii) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (iii) the proposed expiration date of such Letter of Credit, (iv) the name and address of the beneficiary thereof, and (v) such other information (including, in the case of an amendment, renewal, or extension, identification of the outstanding Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit. The Issuing Lender shall have no obligation to issue a Letter of Credit if any of the following would result after giving effect to the issuance of such requested Letter of Credit:

(i) the Letter of Credit Usage would exceed \$10,000,000, or

(ii) the Letter of Credit Usage would exceed the Maximum Revolver Amount less the outstanding amount Advances.

Each Letter of Credit shall be in form and substance acceptable to the Issuing Lender (in the exercise of its Permitted Discretion), including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender is obligated to advance funds under a Letter of Credit, Borrower promptly shall reimburse such L/C Disbursement to Issuing Lender by paying to Agent an amount equal to such L/C Disbursement not later than 11:00 a.m., California time, on the date that such L/C Disbursement is made, if Borrower shall have received written or telephonic notice of such L/C Disbursement prior to 10:00 a.m., California time, on such date, or, if such notice has not been received by Borrower prior to such time on such date, then not later than 11:00 a.m., California time, on the Business Day that Borrower receives such notice, if such notice is received prior to 10:00 a.m., California time, on the date of receipt, and, in the absence of such reimbursement, the L/C Disbursement immediately and automatically shall be deemed to be an Advance hereunder and, thereafter, shall bear interest at the rate then applicable to Advances that are Base Rate Loans under Section 2.6. To the extent an L/C Disbursement is deemed to be an Advance hereunder, Borrower’s obligation to reimburse such L/C Disbursement shall be discharged and replaced by the resulting Advance. Promptly following receipt by Agent of any payment from Borrower pursuant to this paragraph, Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made

payments pursuant to Section 2.12(c) to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear.

(b) Promptly following receipt of a notice of L/C Disbursement pursuant to Section 2.12(a), each Lender with a Revolver Commitment agrees to fund its Pro Rata Share of any Advance deemed made pursuant to the foregoing subsection on the same terms and conditions as if Borrower had requested such 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 an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Lender or the Lenders with Revolver Commitments, the Issuing Lender shall be deemed to have granted to each Lender with a Revolver Commitment, and each Lender with a Revolver Commitment shall be deemed to have purchased, 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, and each such Lender agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of any payments made by the Issuing Lender under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender with a Revolver Commitment hereby absolutely and unconditionally agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of each L/C Disbursement made by the Issuing Lender and not reimbursed by Borrower on the date due as provided in clause (a) of this Section, or of any reimbursement payment required to be refunded to Borrower for any reason. Each Lender with a Revolver Commitment acknowledges and agrees that its obligation to deliver to Agent, for the account of the Issuing Lender, an amount equal to its respective Pro Rata Share of each L/C Disbursement made by the Issuing Lender pursuant to this Section 2.12(b) 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 hereof. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of each L/C Disbursement made by the Issuing Lender in respect of such Letter of Credit as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of the 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. 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 to the extent (i) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit may not be reallocated pursuant to Section 2.3(d)(ii), 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 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(d)(ii). Additionally, Issuing Lender shall have no obligation to issue 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 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 Issuing Lender refrain from the issuance of letters of credit generally or such Letter of Credit in particular, (B) the issuance of such Letter of Credit would violate one or more policies of Issuing 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 United States Dollars.

(c) Borrower hereby agrees to indemnify, save, 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), (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of:

(i) any Letter of Credit or any pre-advice of its issuance;

(ii) any transfer, sale, delivery, surrender or endorsement of any Drawing Document at any time(s) held by any such Letter of Credit Related Person in connection with any Letter of Credit;

(iii) any action or proceeding arising out of, or in connection with, any Letter of Credit (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Letter of Credit, or for the wrongful dishonor of, or honoring a presentation under, any Letter of Credit;

(iv) any independent undertakings issued by the beneficiary of any Letter of Credit;

(v) any unauthorized instruction or request made to Issuing Lender in connection with any Letter of Credit or requested Letter of Credit or error in computer or electronic transmission;

(vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated;

(vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds or holder of an instrument or document;

(viii) the fraud, forgery or illegal action of parties other than the Letter of Credit Related Person;

(ix) Issuing Lender's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation; or

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

in each case, including that resulting from the Letter of Credit Related Person's own negligence; provided, however, that such indemnity shall not be available to any Letter of

Credit Related Person claiming indemnification under clauses (i) through (x) above to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. Borrower hereby agrees to pay the Letter of Credit Related Person claiming indemnity on demand from time to time all amounts owing under this Section 2.12(c). If and to the extent that the obligations of Borrower under this Section 2.12(c) are unenforceable for any reason, Borrower agrees to make the maximum contribution to the Letter of Credit Indemnified Costs permissible under applicable law. Borrower hereby acknowledges and agrees that neither the Lender Group nor the Issuing Lender shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Letter of Credit. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(d) Any and all charges, commissions, fees, and costs incurred by the Issuing Lender relating to Letters of Credit shall be Lender Group Expenses for purposes of this Agreement and promptly shall be reimbursable by Borrower to Agent for the account of the Issuing Lender; it being acknowledged and agreed by Borrower that, as of the Restatement Effective Date, the issuance charge imposed by Issuing Lender is 0.125% per annum times the face amount of each Letter of Credit, that such issuance charge may be changed from time to time, and that the Issuing Lender also imposes a schedule of charges for amendments, extensions, drawings, and renewals.

(e) 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), 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. Issuing Lender shall be deemed to have acted with due diligence and reasonable care if Issuing Lender's conduct is in accordance with this Agreement. 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. 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 to effect a cure.

(f) Borrower is responsible for preparing or approving the final text of the Letter of Credit as issued by Issuing Lender, irrespective of any assistance Issuing Lender may

provide such as drafting or recommending text or by Issuing Lender's use or refusal to use text submitted by Borrower. Borrower is solely responsible for the suitability of the Letter of Credit for Borrower's purposes. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, Issuing Lender, 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 such Letter of Credit to be renewed, Borrower will so notify Agent and Issuing Lender at least 15 calendar days before Issuing Lender is required to notify the beneficiary of such Letter of Credit or any advising bank of such nonrenewal pursuant to the terms of such Letter of Credit.

(g) 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 or this Agreement 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 any of its branches or Affiliates being the beneficiary of any Letter of Credit;

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

(v) the existence of any claim, set-off, defense or other right that Borrower or any other Person may have at any time against any beneficiary, any assignee of proceeds, Issuing Lender or any other Person;

(vi) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this Section 2.12(g), constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, Borrower's reimbursement and other payment obligations and liabilities, arising under, or in connection with, any Letter of Credit, whether against Issuing Lender, the beneficiary or any other Person; or

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

provided, however, that subject to Section 2.12(e) above, the foregoing shall not release Issuing Lender 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 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.

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

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

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

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

(iv) the identity or authority of any presenter or signer of any drawing document or the form, accuracy, genuineness or legal effect of any drawing document (other than Issuing Lender'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 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 the 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 paying or negotiating 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 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 if subsequently Issuing Lender or any court or other finder of fact determines such presentation should have been honored;

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

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

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

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

(ii) there shall be imposed on Issuing Lender or any other member of the Lender Group any other condition regarding any Letter of Credit,

(iii) and the result of the foregoing is to increase, directly or indirectly, the cost to Issuing Lender or any other member of the Lender Group of issuing, making, participating in, or maintaining any Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrower, and Borrower shall pay within 30 days after 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. The determination by Agent of any amount due pursuant to this Section 2.12(i), 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.

2.13 LIBOR 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 “LIBOR 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 LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate 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 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) termination of this Agreement pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrower properly has exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate 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 the LIBOR Rate and Agent shall have the right to convert the interest rate on all outstanding LIBOR Rate Loans to the rate then applicable to Base Rate Loans hereunder.

(b) **LIBOR 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 LIBOR Option by notifying Agent prior to 10:00 a.m. (California time) at least 3 Business Days prior to the commencement of the proposed Interest Period (the “LIBOR Deadline”). Notice of Borrower’s election of the LIBOR 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 LIBOR Notice received by Agent before the LIBOR Deadline, or by telephonic notice received by Agent before the LIBOR Deadline (to be confirmed by delivery to Agent of a LIBOR Notice received by Agent prior to 5:00 p.m. (California time) on the same day). Promptly upon its receipt of each such LIBOR Notice, Agent shall provide a copy thereof to each of the Lenders having a Revolver Commitment.

(ii) Each LIBOR Notice shall be irrevocable and binding on Borrower. In connection with each LIBOR Rate Loan, Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense incurred by Agent or any Lender as a result of (a) the payment of any principal of any LIBOR Rate 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 LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (c) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, “Funding Losses”). Funding Losses shall, with respect to Agent or any Lender, be deemed to equal the amount determined by Agent or such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such LIBOR Rate Loan had such event not occurred, at the LIBOR Rate that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert, or continue, for the period that would

have been the Interest Period therefor), *minus* (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which Agent or such Lender would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of Agent or a Lender delivered to Borrower setting forth 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.

(iii) Borrower shall have not more than 5 LIBOR Rate Loans in effect at any given time. Borrower only may exercise the LIBOR Option for LIBOR Rate Loans of at least \$100,000 and integral multiples of \$100,000 in excess thereof.

(c) **Prepayments** . Borrower may prepay LIBOR Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans are 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 proceeds of Borrower's and its Subsidiaries' Collections 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 clause (b)(ii) above.

(d) Special Provisions Applicable to LIBOR Rate .

(i) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including any Changes in Law (including any changes in tax laws (except changes of general applicability in corporate income tax laws)) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), excluding the Reserve Percentage, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the LIBOR Rate. 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 LIBOR Rate and the method for determining the amount of such adjustment, or (B) repay the LIBOR Rate Loans of such Lender with respect to which such adjustment is made (together with any amounts due under Section 2.13(b)(ii)).

(ii) 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 LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, 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) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be

deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (z) Borrower shall not be entitled to elect the LIBOR Option until such Lender determines that it would no longer be unlawful or impractical to do so.

(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 acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate. The provisions of this Section shall apply as if each Lender or its Participants had match funded any Obligation as to which interest is accruing at the LIBOR Rate by acquiring eurodollar deposits for each Interest Period in the amount of the LIBOR Rate Loans.

2.14 **Capital Requirements** .

(a) If, after the date hereof, Issuing Lender or any Lender determines that (i) any Change in Law regarding capital 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 (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 as a consequence of Issuing Lender's or such Lender's commitments 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 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 in writing thereof. Following receipt of such written 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 60 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. Failure or delay on the part of Issuing Lender or any Lender to demand compensation pursuant to this Section shall not constitute a waiver of Issuing Lender's or such Lender's right to demand such compensation.

(b) If Issuing Lender or any Lender requests additional or increased costs referred to in Section 2.12(i) or Section 2.13(d)(i) or amounts under Section 2.14(a) or sends a notice under Section 2.13(d)(ii) relative to changed circumstances (such Issuing Lender or Lender, an "Affected Lender"), then such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.12(i), Section 2.13(d)(i) or Section 2.14(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans and (ii) in the

reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrower agrees to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrower's obligation to pay any future amounts to such Affected Lender pursuant to Section 2.12(i), Section 2.13(d)(i) or Section 2.14(a), as applicable, or to enable Borrower to obtain LIBOR Rate Loans, then Borrower (without prejudice to any amounts then due to such Affected Lender under Section 2.12(i), Section 2.13(d)(i) or Section 2.14(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.12(i), Section 2.13(d)(i) or Section 2.14(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain LIBOR Rate Loans, may designate a different Issuing Lender or substitute a Lender, in each case, reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and commitments, and upon such purchase by the Replacement Lender, which such Replacement Lender shall be deemed to be "Issuing Lender" or a "Lender" (as the case may be) for purposes of this Agreement and such Affected Lender shall cease to be "Issuing Lender" or a "Lender" (as the case may be) for purposes of this Agreement.

(c) Notwithstanding anything herein to the contrary, the protection of Sections 2.12(i), 2.13(d), and 2.14 shall be available to Issuing Lender and each Lender (as applicable) regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, judicial ruling, judgment, guideline, treaty or other change or condition which shall have occurred or been imposed, so long as it shall be customary for issuing banks or lenders affected thereby to comply therewith.

2.15 Accordion.

(a) At any time during the period from and after the Restatement Effective Date through but excluding the Revolver Maturity Date, at the option of Borrower (but subject to the conditions set forth in clause (b) below), the Revolver Commitments and the Maximum Revolver Amount may be increased by an amount in the aggregate for all such increases of the Revolver Commitments and the Maximum Revolver Amount not to exceed the Available Increase Amount (each such increase, an "Increase"). Agent shall invite each Lender to increase its Revolver Commitments (it being understood that no Lender shall be obligated to increase its Revolver Commitments) in connection with a proposed Increase, and if sufficient Lenders do not agree to increase their Revolver Commitments in connection with such proposed Increase, then Agent or Borrower may invite any prospective lender who is reasonably satisfactory to Agent and Borrower to become a Lender in connection with a proposed Increase (the date such Increase is made, the "Increase Date"). Any Increase shall be in an amount of at least \$5,000,000 and integral multiples of \$1,000,000 in excess thereof. In no event may the Revolver Commitments and the Maximum Revolver Amount be increased pursuant to this Section 2.14 on more than two occasions in the aggregate for all such Increases. Additionally, for the avoidance of doubt, it

is understood and agreed that in no event shall the aggregate amount of the Increases to the Revolver Commitments exceed \$10,000,000.

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

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

(ii) each of the conditions precedent set forth in Section 3.3 are satisfied,

(iii) Borrower has delivered to Agent updated pro forma Projections (after giving effect to the applicable Increase) for Borrower and its Subsidiaries evidencing (A) that on a pro forma basis after giving effect to the applicable Increase, the Leverage Ratio of Borrower and its Subsidiaries as of the end of the fiscal quarter most recently ended as to which financial statements were required to be delivered pursuant to this Agreement was at least 0.25 less than the maximum Leverage Ratio permitted pursuant to Section 7.18(a)(i) for such fiscal quarter, and (B) compliance on a pro forma basis with Section 7.18 for the 4 fiscal quarters (on a quarter-by-quarter basis) immediately following the proposed date of the applicable Increase, and

(c) Unless otherwise specifically provided herein, all references in this Agreement and any other Loan Document to Revolving Loans shall be deemed, unless the context otherwise requires, to include Revolving Loans made pursuant to the increased Revolver Commitments and Maximum Revolver Amount pursuant to this Section 2.15.

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

(e) The Revolving Loans, Revolver Commitments, and Maximum Revolver Amount established pursuant to this Section 2.15 shall constitute Revolving Loans, Revolver Commitments, and Maximum Revolver Amount under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from any guarantees and the security interests created by

the Loan Documents. Borrower shall take any actions reasonably required by Agent to ensure and demonstrate that the Liens and security interests granted by the Loan Documents continue to be perfected under the Code or otherwise after giving effect to the establishment of any such new Revolver Commitments and Maximum Revolver A amount.

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 prior fulfillment, to the satisfaction of Agent and each Lender (the making of such initial extension of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the following), of each of the following conditions precedent:

(a) the Restatement Effective Date shall occur on or before September 21, 2017;

(b) Agent shall have received each of the following documents, in form and substance satisfactory to Agent, duly executed, and each such document shall be in full force and effect:

(i) a Notice of Borrowing,

(ii) the Disbursement Letter,

(iii) the Fee Letter,

(iv) the Master Reaffirmation Agreement,

(v) Trademark Security Agreement,

(vi) mortgage modifications with respect to each existing Mortgage, and

(vii) Joinder Agreement with respect to the Intercompany Subordination Agreement, by Freshpet Europe LTD, a United Kingdom private limited company, and acknowledged by the Borrower and the Agent;

(c) Agent shall have received a certificate from the Secretary of Borrower, each other Loan Party and each of their respective Subsidiaries (i) attesting to the resolutions of such Person's Board of Directors authorizing its execution, delivery, and performance of this Agreement and the other Loan Documents to which such Person is a party, (ii) authorizing specific officers of such Person to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers of such Person;

(d) Agent shall have received copies of Borrower's, each other Loan Party's and each of their respective Subsidiaries' Governing Documents, as amended, modified, or supplemented to the Restatement Effective Date, certified by the Secretary of such Person;

(e) Agent shall have received a certificate of status with respect to Borrower, each other Loan Party and each of their respective Subsidiaries, each dated within 10 days of the Restatement Effective Date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of such Person, which certificate shall indicate the such Person is in good standing in such jurisdiction;

(f) Agent shall have received certificates of status with respect to Borrower, each other Loan Party and each of their respective Subsidiaries, each dated within 30 days of the Restatement Effective Date, such certificates to be issued by the appropriate officer of the jurisdictions (other than the jurisdiction of organization of such Person) in which such Person's failure to be duly qualified or licensed would constitute a Material Adverse Change, which certificates shall indicate that such Person is in good standing in such jurisdictions;

(g) Agent shall have received certificates of insurance and endorsements as are required by Section 6.8, the form and substance of which shall be reasonably satisfactory to Agent;

(h) Agent shall have received an opinion of Borrower's counsel in form and substance reasonably satisfactory to Agent;

(i) Agent shall have received satisfactory evidence (including a certificate of the chief financial officer of Borrower) that all tax returns required to be filed by Borrower and its Subsidiaries have been timely filed and all taxes upon Borrower and its Subsidiaries or their properties, assets, income, and franchises (including (a) Real Property taxes and sales taxes, which could, individually or in the aggregate, reasonably be expected to result in a liability to Borrower or any of its Subsidiaries in excess of \$10,000, and (b) payroll taxes) have been paid prior to delinquency, except such taxes that are the subject of a Permitted Protest;

(j) Borrower shall have paid all Lender Group Expenses incurred in connection with the transactions evidenced by this Agreement and invoiced at least 2 Business Days prior to the Restatement Effective Date;

(k) Agent shall have received copies of Borrower's quarterly financial statements for the two quarter period ending June 30, 2017, which shall be in form and substance reasonably satisfactory to Agent;

(l) Agent shall have received a copy of the release, signed by CIT Bank, N.A. (f/k/a OneWest Bank, N.A. "CIT") and filed with the United States Patent and Trademark Office, evidencing the release of CIT's security interest in all of the Loan Parties' trademarks; and

(m) Borrower and each of its Subsidiaries shall have received all licenses, approvals or evidence of other actions required by any Governmental Authority in connection with the execution and delivery by Borrower or its Subsidiaries of the Loan Documents or with the consummation of the transactions contemplated thereby.

3.2 Conditions Subsequent to the Initial Extension of Credit

- . The obligation of the Lender Group (or any member thereof) to continue to make Advances (or otherwise extend

credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of each of the conditions subsequent set forth below (the failure by Borrower to so perform or cause to be performed constituting an Event of Default):

(a) use commercially reasonable efforts to provide the Agent a Collateral Access Agreement, within 60 days of the Restatement Effective Date, with respect to Borrower's location at the address 7132 Rupperville Road, Allentown, PA 18106.

3.3 Conditions Precedent to all Extensions of Credit

. The obligation of the Lender Group (or any member thereof) to make any Advances hereunder at any time (or to extend any other credit hereunder) 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, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date);

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

(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, any Lender, or any of their Affiliates; and

(d) no Material Adverse Change shall have occurred.

3.4 Term

. This Agreement shall continue in full force and effect for a term ending on the Revolver 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.

3.5 Effect of Termination

. On the date of termination of this Agreement, pursuant to the provisions hereof, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and, except to the extent due and payable prior to such date pursuant to the provisions hereof, 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 (a) providing Letter of Credit Collateralization, and (b) providing 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, mortgage 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.

3.6 Early Termination by Borrower

. Borrower has the option, at any time upon 3 Business Days prior written notice to Agent, to terminate this Agreement by paying to Agent, in cash, the Obligations (including (a) providing Letter of Credit Collateralization, and (b) providing Bank Product Collateralization), 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, and (b) providing Bank Product Collateralization), in full.

4. CREATION OF SECURITY INTEREST.

4.1 Grant of Security Interest

. Borrower hereby grants to Agent, for the benefit of the Lender Group and the Bank Product Providers, a continuing security interest in all of its right, title, and interest in all currently existing and hereafter acquired or arising Borrower Collateral in order to secure prompt repayment of any and all of the Obligations in accordance with the terms and conditions of the Loan Documents and in order to secure prompt performance by Borrower of each of its covenants and duties under the Loan Documents. The Agent's Liens in and to the Borrower Collateral shall attach to all Borrower Collateral without further act on the part of Agent or Borrower. Anything contained in this Agreement or any other Loan Document to the contrary notwithstanding, except for Permitted Dispositions, Borrower and its Subsidiaries have no authority, express or implied, to dispose of any item or portion of the Collateral.

4.2 Negotiable Collateral

. In the event that any Borrower Collateral, including proceeds, is evidenced by or consists of Negotiable Collateral, and if and to the extent that Agent determines that perfection or priority of Agent's security interest is dependent on or enhanced by possession, Borrower, promptly upon the request of Agent, shall endorse and deliver physical possession of such Negotiable Collateral to Agent.

4.3 Collection of Accounts, General Intangibles, and Negotiable Collateral

. At any time after the occurrence and during the continuation of an Event of Default, Agent or Agent's designee may (a) notify Account Debtors of Borrower that Borrower's Accounts, chattel paper, or General Intangibles have been assigned to Agent or that Agent has a security interest therein, or (b) collect Borrower's Accounts, chattel paper, or General Intangibles directly and charge the collection costs and expenses to the Loan Account. Borrower agrees that it will hold in trust for the Lender Group, as the Lender Group's trustee, any of its or its Subsidiaries' Collections that it receives and immediately will deliver such Collections to Agent or a Cash Management Bank in their original form as received by Borrower or its Subsidiaries.

4.4 Filing of Financing Statements; Commercial Tort Claims; Delivery of Additional Documentation Required.

(a) Borrower authorizes Agent at any time and from time to time to file, transmit, or communicate, as applicable, financing statements and amendments (i) describing the Borrower Collateral as “all personal property of debtor” or “all assets of debtor” or words of similar effect, (ii) describing the Borrower Collateral as being of equal or lesser scope or with greater detail, or (iii) that contain any information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance. Borrower also hereby ratifies any and all financing statements or amendments previously filed by Agent in any jurisdiction.

(b) If Borrower or its Subsidiaries acquire any commercial tort claims with a value in excess of \$250,000 after the date hereof, Borrower shall promptly (but in any event within 3 Business Days after such acquisition) deliver to Agent a written description of such commercial tort claim and shall deliver a written agreement, in form and substance reasonably satisfactory to Agent, pursuant to which Borrower or its Subsidiary, as applicable, shall grant a perfected security interest in all of its right, title and interest in and to such commercial tort claim to Agent, as security for the Obligations (a “Commercial Tort Claim Assignment”).

(c) At any time upon the request of Agent, Borrower shall execute or deliver to Agent, and shall cause its Subsidiaries to execute or deliver to Agent, any and all financing statements, original financing statements in lieu of continuation statements, amendments to financing statements, fixture filings, security agreements, pledges, assignments, Commercial Tort Claim Assignments, endorsements of certificates of title, and all other documents (collectively, the “Additional Documents”) that Agent may request in its Permitted Discretion, in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect the Agent’s Liens in the assets of Borrower and its Subsidiaries (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), to create and perfect Liens in favor of Agent in any owned Real Property acquired after the Restatement Effective Date, 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, Borrower authorizes Agent to execute any such Additional Documents in Borrower’s name and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In addition, on such periodic basis as Agent shall require, Borrower shall (i) provide Agent with a report of all new U.S. federal patent applications, patents, registered copyrights, copyright applications, registered trademarks, and trademark registration acquired or generated by Borrower or its Subsidiaries during the prior period, and (ii) cause to be prepared, executed, and delivered to Agent supplemental schedules to the applicable Loan Documents to identify such patents, copyrights, and trademarks as being subject to the security interests created thereunder; provided, however, that neither Borrower nor any of its Subsidiaries shall register with the U.S. Copyright Office any unregistered copyrights (whether in existence on the Restatement Effective Date or thereafter acquired, arising, or developed) unless within 20 days of the filing of an application for such registration, the applicable Person executes and delivers to Agent a copyright security agreement in form and substance reasonably satisfactory to Agent, supplemental schedules to any existing copyright security agreement, or such other documentation as Agent reasonably deems necessary in order to perfect and continue perfected Agent’s Liens on such copyrights following such registration.

4.5 Power of Attorney

. Borrower hereby irrevocably makes, constitutes, and appoints Agent (and any of Agent's officers, employees, or agents designated by Agent) as Borrower's true and lawful attorney, with power to (a) if Borrower refuses to, or fails timely to execute and deliver any of the documents described in Section 4.4, sign the name of Borrower on any of the documents described in Section 4.4, (b) at any time that an Event of Default has occurred and is continuing, sign Borrower's name on any invoice or bill of lading relating to the Borrower Collateral, drafts against Account Debtors, or notices to Account Debtors, (c) send requests for verification of Borrower's or its Subsidiaries' Accounts, (d) endorse Borrower's name on any of its payment items (including all of its Collections) that may come into the Lender Group's possession, (e) at any time that an Event of Default has occurred and is continuing, make, settle, and adjust all claims under Borrower's policies of insurance and make all determinations and decisions with respect to such policies of insurance, and (f) at any time that an Event of Default has occurred and is continuing, settle and adjust disputes and claims respecting Borrower's or its Subsidiaries' Accounts, chattel paper, or General Intangibles directly with Account Debtors, for amounts and upon terms that Agent determines to be reasonable, and Agent may cause to be executed and delivered any documents and releases that Agent determines to be necessary. The appointment of Agent as Borrower's attorney, and each and every one of its rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully and finally repaid and performed and the Lender Group's obligations to extend credit hereunder are terminated.

4.6 Right to Inspect

. Agent and each Lender (through any of their respective officers, employees, or agents) shall have the right, from time to time hereafter to inspect the Books and make copies or abstracts thereof and to check, test, and appraise the Collateral, or any portion thereof, in order to verify Borrower's and its Subsidiaries' financial condition or the amount, quality, value, condition of, or any other matter relating to, the Collateral.

4.7 Control Agreements

. Borrower agrees that it will and will cause its Subsidiaries to take commercially 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 7.12) all of its or their Securities Accounts, Deposit Accounts, electronic chattel paper, Investment Property, and letter-of-credit rights; provided that (i) the Borrower may keep up to \$25,000 in the aggregate in accounts that are not subject to the foregoing and (ii) the requirements in this Section 4.7 or Section 2.7 shall not apply to Excluded Deposit Accounts. Upon the occurrence and during the continuance of an Event of Default, Agent may notify any bank or securities intermediary to liquidate the applicable Deposit Account or Securities Account or any related Investment Property maintained or held thereby and remit the proceeds thereof to the Agent's Account.

5. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Restatement Effective Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be

applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Advance (or other extension of credit) 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, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

5.1 No Encumbrances

. Borrower and its Subsidiaries have good and indefeasible 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.

5.2 [Intentionally Omitted] .

5.3 [Intentionally Omitted] .

5.4 Equipment

. All of the Equipment of Borrower and its Subsidiaries that is necessary or material to conduct their business is used or held for use in their business and is fit for such purposes, except for any failure to comply with the foregoing with respect to Equipment with a market value less than or equal to \$250,000.

5.5 Location of Inventory and Equipment

. The Inventory and Equipment of Borrower and its Subsidiaries (other than (w) Equipment out for repair, (x) Equipment in transit between such locations, (y) Chillers located at one or more of the Installed Stores and (z) other Equipment with an after market value not in excess of \$500,000) are not stored with a bailee, warehouseman, or similar party and (other than (w) Equipment out for repair, (x) Equipment in transit between such locations, (y) Chillers located at one or more of the Installed Stores and (z) other Equipment with an after market value not in excess of \$500,000) are located only at, or in-transit between, the locations identified on Schedule 5.5 (as such Schedule may be updated pursuant to Section 6.9).

5.6 Inventory Records

. Borrower keeps correct and accurate records itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof in all material respects.

5.7 State of Incorporation; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims

(a) The jurisdiction of organization of Borrower and each of its Subsidiaries is set forth on Schedule 5.7(a), as such Schedule may be amended upon no less than 30 days prior written notice to Agent.

(b) The chief executive office of Borrower and each of its Subsidiaries is located at the address indicated on Schedule 5.7(b) (as such Schedule may be updated pursuant to Section 6.9).

(c) Borrower's and each of its Subsidiaries' organizational identification numbers in their jurisdiction of organization and employer identification number, if any, are identified on Schedule 5.7(c), as such Schedule may be amended upon no less than 30 days prior written notice to Agent.

(d) As of the Restatement Effective Date, Borrower and its Subsidiaries do not hold any commercial tort claims, except as set forth on Schedule 5.7(d), as such Schedule may be amended upon no less than 30 days prior written notice to Agent.

5.8 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) [Intentionally Omitted].

(c) Set forth on Schedule 5.8(c), as such Schedule may be amended upon no less than 30 days prior written notice to Agent, 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 in the case of a corporation, non-assessable.

(d) Except as set forth on Schedule 5.8(d), as such Schedule may be amended upon no less than 30 days prior written notice to Agent 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. 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.

5.9 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 any contractual obligation of Borrower, (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

interestholders or any approval or consent of any Person under any contractual obligation of Borrower, other than consents or approvals that have been obtained and that are still in force and effect except in the case of clauses (ii) or (iv) where the failure to do so could not reasonably be expected to result in a Material Adverse Change.

(c) Other than the filing of financing statements and the recordation of the Mortgages, 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 or any other Person, 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, and first priority Liens, subject only to Permitted Liens (with respect to copyrights, trademarks, and patents, if and to the extent that perfection can be achieved by UCC filings or filings with the U.S. Patent and Trademark Office or U.S. Copyright Office, as applicable).

5.10 **Litigation**

. Other than those matters described on Schedule 5.10 and other than matters arising after the Restatement Effective Date that reasonably could not be expected to result in a Material Adverse Change, there are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened against Borrower or any of its Subsidiaries.

5.11 **No Material Adverse Change**

. All financial statements relating to Borrower and its Subsidiaries that have been delivered by Borrower to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments and reclassifications) 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 the date of the latest financial statements submitted to Agent on or before the Restatement Effective Date.

5.12 **Fraudulent Transfer**

(a) The Loan Parties on a consolidated basis are 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.

5.13 Employee Benefits

. None of Borrower, any of its Subsidiaries, or any of their ERISA Affiliates maintains or contributes to any Benefit Plan.

5.14 Environmental Condition

. Except as set forth on Schedule 5.14, (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 protection statute as a Hazardous Materials disposal site, (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 that individually or in the aggregate could reasonably be expected to result in a Material Adverse Change.

5.15 Brokerage Fees

. Neither Borrower nor any of its Subsidiaries has utilized the services of any broker or finder in connection with Borrower's obtaining financing from the Lender Group under this Agreement and no brokerage commission or finders fee is payable by Borrower or its Subsidiaries in connection herewith.

5.16 Intellectual Property

. Borrower and its Subsidiaries own, hold licenses in or otherwise have a right to use 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 5.16 (as updated from time to time) is a true, correct, and complete listing of all material patents, patent applications, registered trademarks, trademark applications, copyright registrations and copyright applications as to which Borrower or one of its Subsidiaries is the owner or is an exclusive licensee.

5.17 Leases

. Borrower and its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and all of such leases are valid and subsisting and no material default by Borrower or its Subsidiaries exists under any of them.

5.18 Deposit Accounts and Securities Accounts

. Set forth on Schedule 5.18 (as updated from time to time) is a listing of all of Borrower's and its 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.

5.19 Complete Disclosure

. All factual information (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. On the Restatement Effective Date, the Restatement Effective Date Projections represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent Borrower's good faith estimate of its and its Subsidiaries' future performance for the periods covered thereby (it being understood that actual results may vary from such forecasts and that such variances may be material).

5.20 Indebtedness

. Set forth on Schedule 5.20 is a true and complete list of all Indebtedness of Borrower and its Subsidiaries outstanding immediately prior to the Restatement Effective Date that is to remain outstanding after the Restatement Effective Date and such Schedule accurately reflects the aggregate principal amount of such Indebtedness and describes the principal terms thereof.

5.21 Margin Stock

. No 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. No part of the proceeds of the loans 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.

5.22 Governmental Regulation

. No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

5.23 OFAC

. No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any loan made 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.

5.24 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) (the "Patriot Act"). No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

6. 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:

6.1 Accounting System

. Maintain a system of accounting that enables Borrower to produce financial statements in accordance with GAAP and maintain records pertaining to the Collateral that contain information as from time to time reasonably may be requested by Agent. Borrower also shall keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to its and its Subsidiaries' sales.

6.2 Collateral Reporting

. Provide Agent (and if so requested by Agent, with copies for each Lender) with the following documents upon reasonable request by the Agent, in form reasonably satisfactory to Agent:

(a) a detailed list of Borrower's and its Subsidiaries' customers, including number of Installed Store locations, and

(b) such other reports as to the Collateral or the financial condition of Borrower and its Subsidiaries, as Agent may request.

6.3 Financial Statements, Reports, Certificates

. Deliver to Agent, with copies to each Lender:

(a) within 45 days after the end of each of the first three quarters during each of Borrower's fiscal years,

(i) an unaudited consolidated balance sheet, income statement, and statement of cash flow covering Borrower's and its Subsidiaries' operations during such period and for the three month period then ended, and

(ii) a Compliance Certificate,

(b) within 120 days after the end of each of Borrower's fiscal years,

(i) consolidated financial statements of Borrower and its Subsidiaries for each such fiscal year, audited by independent certified public accountants reasonably acceptable to Agent and certified, without any qualifications (including any (A) "going concern" or like qualification or exception (except to the extent that such qualification or exception is due

solely to the fact that the Revolver Maturity Date at the time of such audit is scheduled to occur within twelve months of the end of such fiscal year), (B) qualification or exception as to the scope of such audit, or (C) qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of which would be to cause any noncompliance with the provisions of Section 7.18), by such accountants to have been prepared in accordance with GAAP (such audited financial statements to include a balance sheet, income statement, and statement of cash flow and, if prepared, such accountants' letter to management), and

(ii) a Compliance Certificate,

(c) within 90 days after the start of each of Borrower's fiscal years, copies of Borrower's Projections, in form (including as to scope) satisfactory to Agent, in its Permitted Discretion, for the forthcoming fiscal year, month by month, certified by the chief financial officer of Borrower as being such officer's good faith estimate of the financial performance of Borrower during the period covered thereby,

(d) if and when filed by Borrower,

(i) Form 10-Q quarterly reports, Form 10-K annual reports, and Form 8-K current reports, and

(ii) any other filings made by Borrower with the SEC,

(e) promptly, but in any event within 5 days after a senior officer of Borrower has knowledge of any event or condition that constitutes a Default or an Event of Default, notice thereof and a statement of the curative action that Borrower proposes to take with respect thereto (if any),

(f) promptly after the commencement thereof, but in any event within 5 days after the service of process with respect thereto on Borrower or any of its Subsidiaries, notice of all actions, suits, or proceedings brought by or against Borrower or any of its Subsidiaries before any Governmental Authority which reasonably could be expected to result in a Material Adverse Change, and

(g) upon the request of Agent, any other information reasonably requested relating to the financial condition of Borrower or its Subsidiaries.

In addition, Borrower agrees that no Subsidiary of Borrower will have a fiscal year different from that of Borrower. Borrower also agrees to cooperate with Agent to allow Agent to consult with its independent certified public accountants if Agent reasonably requests the right to do so and that, in such connection, its independent certified public accountants are authorized to communicate with Agent and to release to Agent whatever financial information concerning Borrower or its Subsidiaries that Agent reasonably may request.

6.4 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.

6.5 [Intentionally Omitted] .

6.6 Maintenance of Properties

. Maintain and preserve all of its properties which are necessary or material to the proper conduct to its business in good working order and condition, ordinary wear and tear excepted, and comply at all times with the provisions of all material leases to which it is a party as lessee, so as to prevent any loss or forfeiture thereof or thereunder, except for any failure to comply with the foregoing with respect to properties with a market value less than or equal to \$250,000.

6.7 Taxes

. Cause all 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. Borrower will and will cause its Subsidiaries to make timely payment or deposit of all tax payments and withholding taxes required of it and them by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Agent with proof satisfactory to Agent indicating that Borrower and its Subsidiaries have made such payments or deposits.

6.8 Insurance .

(a) At Borrower's expense, maintain insurance respecting its and its 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 (it being understood and agreed that the insurance company that provides such insurance on the Restatement Effective Date, and the amounts of the insurance maintained on the Restatement Effective Date shall be deemed to be satisfactory to Agent). Borrower shall deliver copies of all such policies to Agent with an endorsement naming Agent as the sole loss payee (under a satisfactory lender's loss payable endorsement) or additional insured, as appropriate (except with respect to business interruption). 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 in excess of \$250,000 covered by such insurance. Agent shall have the exclusive right to adjust any losses claimed under any such insurance policies after the occurrence and during the continuation of an Event of Default, without any liability to Borrower whatsoever in respect of such adjustments. Any monies received as payment for any loss under any insurance policy mentioned above (other than liability insurance policies) or as payment of any award or compensation for condemnation or taking by eminent domain shall be applied as set forth in, subject to Section 2.4(c).

(c) Borrower will not and will not suffer or permit its Subsidiaries to take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 6.8, unless Agent is included thereon as an additional insured or loss payee under a lender's loss payable endorsement. Borrower promptly shall notify Agent whenever such separate insurance is taken out, specifying the insurer thereunder and full particulars as to the policies evidencing the same, and copies of such policies promptly shall be provided to Agent.

6.9 Location of Inventory and Equipment

. Keep Borrower's and its Subsidiaries' Inventory and Equipment (other than (w) Equipment out for repair, (x) Equipment in transit between such locations, (y) Chillers located at, or in transit to, one or more of the Installed Stores and (z) other Equipment with an after market value not in excess of \$500,000) only at the locations identified on Schedule 5.5 and their chief executive offices only at the locations identified on Schedule 5.7(b); provided, however, that Borrower may amend Schedule 5.5 and Schedule 5.7(b) so long as such amendment occurs by written notice to Agent not less than 30 after the date on which such Inventory or Equipment is moved to such new location or such chief executive office is relocated, so long as such new location is within the continental United States, and so long as, at the time of such written notification, Borrower uses commercially reasonable efforts to provide to Agent a Collateral Access Agreement with respect thereto (other than with respect to such locations that are subject to a Mortgage) (for the avoidance of doubt, a Collateral Access Agreement will not be required with respect to any locations described in clauses (w) through (z) in the parenthetical above).

6.10 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.

6.11 Leases

. Pay when due all rents and other amounts, in each case to the extent that such amounts that are not paid when due exceed \$250,000 in the aggregate at any one time, payable under any material leases to which Borrower or any of its Subsidiaries is a party or by which Borrower's or any such Subsidiaries' properties and assets are bound, unless such payments are the subject of a Permitted Protest.

6.12 Existence

. At all times preserve and keep in full force and effect Borrower's and its Subsidiaries' existence and good standing and any rights and franchises material to their businesses; provided, however, that neither Borrower or any of its Subsidiaries shall be required to preserve any such right or franchise if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lenders; provided further that this Section 6.12 shall not prohibit or otherwise limit the Canadian Subsidiary Dissolution.

6.13 Environmental

. (a) Keep any property either owned or operated by Borrower or its Subsidiaries free of any Environmental Liens which could, individually or in the aggregate, reasonably be expected to secure a liability to Borrower or any of its Subsidiaries in excess of \$500,000, or post bonds or other financial assurances sufficient to satisfy the obligations or

liability evidenced by such Environmental Liens, (b) comply with Environmental Laws where any such failure to comply could, individually or in the aggregate, reasonably be expected to result in a liability to Borrower or any of its Subsidiaries in excess of \$500,000 and provide to Agent documentation of such compliance which Agent reasonably requests, (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 which could, individually or in the aggregate, reasonably be expected to result in a liability to Borrower or any of its Subsidiaries in excess of \$500,000 and take any Remedial Actions required to abate said release or otherwise to come into compliance with applicable Environmental Law, and (d) promptly, but in any event within 5 days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien which could, individually or in the aggregate, reasonably be expected to secure a liability to Borrower or any of its Subsidiaries in excess of \$500,000 has been filed against any of the real or personal property of Borrower or its Subsidiaries, (ii) commencement of any Environmental Action or notice that an Environmental Action will be filed against Borrower or its Subsidiaries, and (iii) notice of a violation, citation, or other administrative order which reasonably could be expected to result in a Material Adverse Change.

6.14 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 Agent contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or, modifying this Agreement or any of the Schedules hereto.

6.15 Formation of Subsidiaries

. At the time that Borrower or any Guarantor forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Restatement Effective Date, Borrower or such Guarantor shall (a) cause such new Subsidiary to provide to Agent a Guaranty, Guarantor Security Agreement, and Intercompany Subordination Agreement (or joinder thereto), together with such other security documents (including Mortgages with respect to any Real Property of such new Subsidiary), as well as appropriate financing statements (and with respect to all property subject to a Mortgage, fixture filings), all in form and substance satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary other than any Excluded Property); provided that the Guaranty, Guarantor Security Agreement, and such other security documents shall not be required to be provided to Agent with respect to any Subsidiary of Borrower that is a CFC if providing such documents would result in material adverse tax consequences, (b) within 10 days of such formation or acquisition (or such later date as permitted by Agent in its sole discretion) provide to Agent a pledge agreement and appropriate certificates and powers or financing statements, hypothecating all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Agent; provided that only 65% of the total outstanding voting Stock of any first tier Subsidiary of Borrower that is a CFC (and none of any Subsidiary of such CFC) shall be required to be pledged if pledging a greater amount would result in adverse tax consequences (which pledge, if reasonably requested by Agent, shall be governed by the laws of the jurisdiction of such

Subsidiary), and (c) within 10 days of such formation or acquisition (or such later date as permitted by Agent) provide to Agent all other documentation, including one or more opinions of counsel satisfactory to Agent, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance or other documentation with respect to all property subject to a Mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 6.15 shall be a Loan Document.

6.16 Canadian Subsidiary

. Within 30 days (or such longer period as reasonably agreed to by Agent) after the written request therefor by Agent, Borrower shall deliver an additional stock pledge agreement (in addition to the Stock Pledge Agreement) which is governed by Ontario law and which is otherwise in form and substance reasonably satisfactory to Agent, pursuant to which Borrower shall pledge all outstanding voting Stock of the Canadian Subsidiary (and none of any Subsidiary of such Canadian Subsidiary); provided that only 65% of the total outstanding voting Stock of the Canadian Subsidiary (and none of any Subsidiary of such Canadian Subsidiary) shall be required to be pledged if pledging a greater amount would result in adverse tax consequences.

7. 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:

7.1 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,

(b) Indebtedness set forth on Schedule 5.20,

(c) Permitted Purchase Money Indebtedness,

(d) refinancings, renewals, or extensions of Indebtedness permitted under clauses (b) and (c) above (and continuance or renewal of any Permitted Liens associated therewith) so long as: (i) the terms and conditions of such refinancings, renewals, or extensions do not, in Agent's reasonable judgment, materially impair the prospects of repayment of the Obligations by Borrower or materially impair Borrower's creditworthiness, (ii) such refinancings, renewals, or extensions do not result in an increase in the principal amount of, or interest rate with respect to, the Indebtedness so refinanced, renewed, or extended, (iii) 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, (iv) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension Indebtedness must include subordination terms and conditions that are at least as favorable to the Lenders as those that were applicable to the refinanced, renewed, or extended Indebtedness, and (v) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is

liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended,

(e) endorsement of instruments or other payment items for deposit,

(f) Indebtedness composing Permitted Investments,

(g) Subordinated Debt in an aggregate amount not to exceed \$5,000,000 at any time outstanding,

(h) Hedge Obligations, and

(i) other unsecured Indebtedness in an aggregate amount not to exceed \$2,500,000 at any time outstanding.

7.2 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 (including Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is refinanced, renewed, or extended under Section 7.1(d) and so long as the replacement Liens only encumber those assets that secured the refinanced, renewed, or extended Indebtedness).

7.3 Restrictions on Fundamental Changes .

(a) Enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Stock other than (i) to consummate a Permitted Acquisition and (ii) mergers between Borrower and any of its Subsidiaries, provided that Borrower is the surviving entity of such merger and remains an entity organized under the laws of a state within the United States.

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution); provided that this Section 7.3(b) shall not prohibit or otherwise limit the Canadian Subsidiary Dissolution.

(c) Convey, sell, lease, license, assign, transfer, or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its assets.

7.4 Disposal of Assets

. Other than Permitted Dispositions, convey, sell, lease, license, assign, transfer, or otherwise dispose of any of Borrower's or its Subsidiaries assets; provided that this Section 7.4 shall not prohibit or otherwise limit the Canadian Subsidiary Dissolution.

7.5 Change Name

. Change Borrower's or any of its Subsidiaries' names, organizational identification number, state of organization or organizational identity; provided, however, that Borrower or any of its Subsidiaries may change their names upon at least 30 days prior written notice to Agent of such change and so long as, at the time of such written notification, Borrower or its Subsidiary provides any financing statements necessary to perfect and continue perfected the Agent's Liens.

7.6 Nature of Business

- . Make any change in the principal nature of its or their business.

7.7 Prepayments and Amendments

- . Except in connection with a refinancing permitted by Section 7.1(e),

(a) optionally prepay, redeem, defease, purchase, or otherwise acquire any Subordinated Debt of Borrower or its Subsidiaries, other than the Obligations in accordance with this Agreement, or

(b) directly or indirectly, amend, modify, alter, increase, or change any of the terms or conditions of any agreement, instrument, document, indenture, or other writing evidencing or concerning Indebtedness permitted under Section 7.1(b) to the extent that such amendment, modification, or change could, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of the Lender Group.

7.8 Change of Control

- . Cause, permit, or suffer, directly or indirectly, any Change of Control.

7.9 Consignments

- . Consign any of its or their Inventory or sell any of its or their Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale.

7.10 Distributions

- . Make any distribution or declare or pay any dividends (in cash or other property, other than common Stock) on, or purchase, acquire, redeem, or retire any of Borrower's Stock, of any class, whether now or hereafter outstanding (each, a "Distribution"), other than (a) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Borrower may make Distributions to present or former employees, officers, or directors of Borrower (or any spouses, ex-spouses, or estates of any of the foregoing) on account of redemptions of Stock of Borrower held by such Persons, provided that the aggregate amount of such redemptions made by Borrower during any fiscal year does not exceed \$500,000, (b) dividends and distributions declared and paid on the Stock of any Subsidiary of Borrower ratably to the holders of such Stock, (c) cashless repurchases of Stock of the Borrower deemed to occur upon exercise of stock options or warrants if such Stock represent a portion of the exercise price of such options or warrants, (d) Distributions within 60 days after the date of declaration thereof if at such date of declaration such Distribution would have been permitted under this Section 7.10 so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, and (e) other Distributions if after giving pro forma effect thereto, the Borrower is in compliance with the Leverage Ratio required by Section 7.18(a) and so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom.

7.11 Accounting Methods

- . Modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP) or enter into, modify, or terminate any agreement currently existing, or at any time hereafter entered into with any third party accounting firm or service bureau for the preparation or storage of Borrower's or its Subsidiaries' accounting records without said accounting firm or service bureau agreeing to provide Agent information regarding Borrower's and its Subsidiaries' financial condition.

7.12 **Investments**

. Except for Permitted Investments, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment; provided, however, that Borrower and its Subsidiaries shall not have Permitted Investments (other than in the Cash Management Accounts) in Deposit Accounts or Securities Accounts in an aggregate amount in excess of \$25,000 at any one time unless Borrower or its Subsidiary, as applicable, and the applicable securities intermediary or bank have entered into Control Agreements governing such Permitted Investments in order to perfect (and further establish) the Agent's Liens in such Permitted Investments. Subject to the foregoing proviso, Borrower shall not and shall not permit its Subsidiaries to establish or maintain any Deposit Account or Securities Account unless Agent shall have received a Control Agreement in respect of such Deposit Account or Securities Account.

7.13 **Transactions with Affiliates**

. Directly or indirectly enter into or permit to exist any transaction with any Affiliate of Borrower except for transactions that (i) are in the ordinary course of Borrower's business, (ii) are upon fair and reasonable terms, and (iii) are no less favorable to Borrower or its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate.

7.14 **Suspension**

. Suspend or go out of a substantial portion of its or their business.

7.15 [**Intentionally Omitted** .]

7.16 **Use of Proceeds**

. Use the proceeds of the Advances for any purpose other than (i) on the Restatement Effective Date, to repay the Indebtedness evidenced by the Existing Loan Agreement and 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 (ii) thereafter, to purchase Eligible Equipment, finance Capital Expenditures, finance general corporate expenses and to use in any other manner consistent with the terms and conditions hereof, for its lawful and permitted purposes; provided, that in no event shall any proceeds of the Advances be used to refinance or repay any Subordinated Debt, any Indebtedness owed to any Permitted Holder or to any Affiliate of the Borrower or any Permitted Preferred Stock.

7.17 [**Intentionally Omitted** .]

7.18 **Financial Covenants**

Fail to maintain or achieve:

(i) **Leverage Ratio** . A Leverage Ratio, measured on a quarter-end basis, for the 12 month period ending September 30, 2017, and for each 12 month period ending on the last day of any fiscal quarter thereafter, that is less than or equal to 3.00:1.00.

(ii) **Fixed Charge Coverage Ratio** . A Fixed Charge Coverage Ratio, measured on a quarter-end basis, for the 12 month period ending September 30, 2017, and for each 12 month period ending on the last day of any fiscal quarter thereafter, of at least 1.25:1.00.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1 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 the reimbursement of Lender Group Expenses (other than any portion thereof constituting principal, any amount payable to Issuing Lender in reimbursement of any drawing under a Letter of Credit, fees or interest) 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 10 days, (b) all or any portion of the Obligations consisting of principal or any amount payable to Issuing Lender in reimbursement of any drawing under a Letter of Credit, or (c) any interest or other amounts that do not constitute Lender Group Expenses (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), principal or any amount payable to Issuing Lender in reimbursement of any drawing under a Letter of Credit and such failure continues for a period of five days;

8.2 If Borrower or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 6.2, 6.3, 6.8, 6.12, 6.15, or 6.16 of this Agreement, or (ii) Sections 7.1 through 7.18 of this Agreement; or

(b) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of Borrower or (ii) the date on which written notice thereof is given to Borrower by Agent;

8.3 If any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, subjected to a writ or distress warrant or levied upon;

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

8.5 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 45 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 entered therein;

8.6 If Borrower or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs;

8.7 If a notice of Lien, levy, or assessment is filed of record involving an amount of the Applicable Cross-Default Amount or more with respect to any of Borrower's or any of its Subsidiaries' assets by the United States, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, or if any taxes or debts owing at any time hereafter to any one or more of such entities becomes a Lien, whether choate or otherwise, upon any of Borrower's or any of its Subsidiaries' assets and the same is not paid before such payment is delinquent;

8.8 If a judgment or other claim becomes a Lien or encumbrance involving an amount of the Applicable Cross-Default Amount or more upon any material portion of Borrower's or any of its Subsidiaries' assets;

8.9 If there is a default in any material agreement of Indebtedness or any Material Contract to which Borrower or any of its Subsidiaries is a party involving an amount of the Applicable Cross-Default Amount or more and such default (a) occurs at the final maturity of the obligations thereunder, or (b) results in a right by the other party thereto, irrespective of whether exercised, to accelerate the maturity of Borrower's or its Subsidiaries' obligations thereunder or to terminate such agreement;

8.10 If Borrower or any of its Subsidiaries makes any payment on account of Indebtedness that has been contractually subordinated in right of payment to the payment of the Obligations (other than reimbursement of a *de minimis* amount of expenses), except to the extent such payment is permitted by the terms of the subordination provisions applicable to such Indebtedness;

8.11 If any warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

8.12 If the obligation of any Guarantor under any Guaranty is limited or terminated by operation of law or by any such Guarantor thereunder;

8.13 If this 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 (with respect to intellectual property, limited to perfection in the United States), except as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement; or

8.14 Any provision of any Loan Document shall at any time for any reason 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 Borrower or its Subsidiaries, or by any Governmental Authority having jurisdiction over Borrower or its Subsidiaries seeking to establish the invalidity or unenforceability thereof, or Borrower or its Subsidiaries, shall deny

that Borrower or its Subsidiaries has any liability or obligation purported to be created under any Loan Document.

9. THE LENDER GROUP'S RIGHTS AND REMEDIES.

9.1 Rights and Remedies

. Upon the occurrence, and during the continuation, of an Event of Default, the Required Lenders (at their election but without notice of their election and without demand) 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), in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, all of which are authorized by Borrower:

(a) (i) Declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrower shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrower, and (ii) direct Borrower to provide (and Borrower agrees that upon receipt of such notice it will provide) Letter of Credit Collateralization to Agent to be held as security for Borrower's reimbursement obligations for drawings that may subsequently occur under issued and outstanding Letters of Credit;

(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) Declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with (i) any obligation of any Lender to make Advances and (ii) the obligation of Issuing Lender to issue Letters of Credit;

(d) Settle or adjust disputes and claims directly with Borrower's Account Debtors for amounts and upon terms which Agent considers advisable, and in such cases, Agent will credit Borrower's Loan Account with only the net amounts received by Agent in payment of such disputed Accounts after deducting all Lender Group Expenses incurred or expended in connection therewith;

(e) Cause Borrower to hold all of its returned Inventory in trust for the Lender Group and segregate all such Inventory from all other assets of Borrower or in Borrower's possession;

(f) Without notice to or demand upon Borrower, make such payments and do such acts as Agent considers necessary or reasonable to protect its security interests in the Collateral. Borrower agrees to assemble the Collateral if Agent so requires, and to make the Collateral available to Agent at a place that Agent may designate which is reasonably convenient to both parties. Borrower authorizes Agent to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest,

or compromise any Lien that in Agent's determination appears to conflict with the priority of Agent's Liens in and to the Collateral and to pay all expenses incurred in connection therewith and to charge Borrower's Loan Account therefor. With respect to any of Borrower's owned or leased premises, Borrower here by grants Agent a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of the Lender Group's rights or remedies provided herein, at law, in equity, or otherwise;

(g) Without notice to Borrower (such notice being expressly waived), and without constituting an acceptance of any collateral in full or partial satisfaction of an obligation (within the meaning of the Code), set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by the Lender Group (including any amounts received in the Cash Management Accounts), or (ii) Indebtedness at any time owing to or for the credit or the account of Borrower held by the Lender Group;

(h) Hold, as cash collateral, any and all balances and deposits of Borrower held by the Lender Group, and any amounts received in the Cash Management Accounts, to secure the full and final repayment of all of the Obligations;

(i) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Borrower Collateral. Borrower hereby grants to Agent a license or other right to use, without charge, Borrower's labels, patents, copyrights, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Borrower Collateral, in completing production of, advertising for sale, and selling any Borrower Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to the Lender Group's benefit;

(j) Sell the Borrower Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Agent determines is commercially reasonable. It is not necessary that the Borrower Collateral be present at any such sale;

(k) Except in those circumstances where no notice is required under the Code, Agent shall give notice of the disposition of the Borrower Collateral as follows:

(i) Agent shall give Borrower a notice in writing of the time and place of public sale, or, if the sale is a private sale or some other disposition other than a public sale is to be made of the Borrower Collateral, the time on or after which the private sale or other disposition is to be made; and

(ii) The notice shall be personally delivered or mailed, postage prepaid, to Borrower as provided in Section 12, at least 10 days before the earliest time of disposition set forth in the notice; no notice needs to be given prior to the disposition of any portion of the Borrower Collateral that is perishable or threatens to decline speedily in value or that is of a type customarily sold on a recognized market;

(l) Agent, on behalf of the Lender Group, may credit bid and purchase at any public sale;

(m) Agent may seek the appointment of a receiver or keeper to take possession of all or any portion of the Borrower Collateral or to operate same and, to the maximum extent permitted by law, may seek the appointment of such a receiver without the requirement of prior notice or a hearing; and

(n) 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 notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to Borrower or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations (other than the Bank Product Obligations), inclusive of the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents, shall automatically become and be immediately due and payable and Borrower shall automatically be obligated to repay all of such Obligations in full (including Borrower being obligated to provide (and Borrower agrees that it will provide) (1) Letter of Credit Collateralization to Agent to be held as security for Borrower's reimbursement obligations in respect of drawings that may subsequently occur under issued and outstanding Letters of Credit, and (2) Bank Product Collateralization to be held as security for Borrower's or its Subsidiaries' obligations in respect of outstanding Bank Products), without presentment, demand, protest, or notice or other requirements of any kind, all of which are expressly waived by Borrower.

9.2 Remedies Cumulative

The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. TAXES AND EXPENSES.

If Borrower fails 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, (b) set up such reserves against the Maximum Revolver Amount as Agent deems necessary to protect the Lender Group from the exposure created by such failure, or (c) in the case of the failure to comply with Section 6.8 hereof, obtain and maintain insurance policies of the type described in Section 6.8 and take any action with respect to such policies as Agent deems prudent. Any such amounts paid by Agent shall constitute Lender Group Expenses and any such payments shall not 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.

11. WAIVERS; INDEMNIFICATION.

11.1 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.

11.2 The Lender Group's Liability for Borrower 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 Borrower 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 Borrower Collateral shall be borne by Borrower.

11.3 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, and damages, and all reasonable attorneys fees and disbursements and 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, delivery, 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, and (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 (all the foregoing, collectively, the “Indemnified Liabilities”). The foregoing notwithstanding, Borrower shall have no obligation to any Indemnified Person under this Section 11.3 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. 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 .

12. 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 to Borrower or Agent, as the case may be, at its address set forth below:

If to Borrower: **FRESHPET, INC.**
400 Plaza Drive FL1
Secaucus, NJ 07094
Attn: Richard Kassar
Fax No. (201) 866-2018

with copies to: **KIRKLAND & ELLIS LLP**
601 Lexington Avenue
New York, NY 10022
Attn: Jason Kanner, Esq.
Fax No. (212) 446-6460

If to Agent: **CITY NATIONAL BANK**
555 S. Flower Street
24th Floor
Los Angeles, California 90071
Attn: Garen Papazyan
Fax No.: (213) 673-9801

with copies to: **CITY NATIONAL BANK**
agency**services@**cnb.com

and

KATTEN MUCHIN ROSENMAN LLP
515 South Flower Street
Suite 1000
Los Angeles, California 90071
Attention: Jan Harris Cate, Esq.
Facsimile: (213) 947-1151

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 12, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.**

(b) **THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. 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 13(b).**

(c) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER**

COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES AND THE STATE OF CALIFORNIA, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, ISSUING LENDER, ANY OTHER LENDER OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

(f) IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE

AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SH ALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO

DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(g) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

14. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

14.1 Assignments and Participations.

(a) Any Lender may assign and delegate to one or more assignees (each an "Assignee") all, or any ratable part of all, of the Obligations, the Commitments and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount of \$5,000,000; provided, however, that (w) a Lender may not assign all or any portion of the Obligations or the Commitments to Borrower, any Permitted Holder or any Affiliate thereof, (x) the prior written consent of Agent (not to be unreasonably withheld, delayed or conditioned) shall be required prior to any such assignment by a Lender to another Person that is not a Lender or an Affiliate of a Lender, (y) so long as no Event of Default has occurred and is continuing, the prior written consent of Borrower (not to be unreasonably withheld, delayed or conditioned) shall be required prior to any such assignment by a Lender to another Person that is not a Lender or an Affiliate of a Lender and (z) Borrower and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until

(i) 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, (ii) such Lender and its Assignee have delivered to Borrower and Agent an Assignment and Acceptance, and (iii) the assigning Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of \$5,000. Anything contained herein to the contrary notwithstanding, the payment of any fees shall not be required if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of the assigning Lender.

(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 payment of the above-referenced 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 11.3 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), and such assignment shall effect a novation between Borrower and the Assignee; 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 Article 16 and Section 17.7 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: (1) 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, (2) 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, (3) 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, (4) 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, (5) 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 (6) 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 payment and the fully executed Assignment and Acceptance, 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 to the extent of such assignment.

(e) Any Lender may at any time, with the written consent of Agent, sell to one or more commercial banks, financial institutions, or other Persons not Affiliates of such Lender (a "Participant") participating interests in its Obligations, the 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 remain solely responsible for the performance of such obligations, (iii) 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, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender, or (E) change the amount or due dates of scheduled principal repayments or prepayments or premiums, and (v) 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. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Obligations (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in

any commitments, loans, letters of credit or its other obligations) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) In connection with any such assignment or participation or proposed assignment or participation, a Lender may, subject to the provisions of Section 17.7, 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.

14.2 **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 14.1 hereof and, except as expressly required pursuant to Section 14.1 hereof, no consent or approval by Borrower is required in connection with any such assignment.

15. AMENDMENTS; WAIVERS.

15.1 **Amendments and Waivers**

. No amendment or waiver of any provision of this Agreement or any other Loan Document (other than Bank Product Agreements), 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 Borrower 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, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders affected thereby and Borrower, do any of the following:

(a) increase or extend any Commitment of any Lender,

(b) 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,

(c) reduce the principal of, or the rate of interest on, a ny loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document,

(d) change the Pro Rata Share that is required to take any action hereunder,

(e) amend or modify this Section or any provision of the Agreement providing for consent or other action by all Lenders,

(f) other than as permitted by Section 16.12, release Agent's Lien in all or substantially all of the Collateral,

(g) change the definition of "Required Lenders" or "Pro Rata Share",

(h) other than as permitted by this Agreement or any other Loan Document, release Borrower or all or substantially all of the Guarantors from any obligation for the payment of money, or amend any of the provisions of Section 16.

and, provided further, however, that no amendment, waiver or consent shall, unless in writing and signed by Agent or Issuing Lender, as applicable, affect the rights or duties of Agent or Issuing Lender, as applicable, under this Agreement or any other Loan Document. The foregoing notwithstanding, any amendment, modification, 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 Borrower, shall not require consent by or the agreement of Borrower.

15.2 Replacement of Holdout Lender

(a) If any action to be taken by the Lender Group or Agent hereunder requires the unanimous consent, authorization, or agreement of all Lenders, and a Lender (" Holdout Lender ") fails to give its consent, authorization, or agreement, then Agent, upon at least 5 Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute Lenders (each, a " Replacement Lender "), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender 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 Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender 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 Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 14.1. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to

make the Holdout Lender's 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.

15.3 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.

16. AGENT; THE LENDER GROUP.

16.1 Appointment and Authorization of Agent

. Each Lender hereby designates and appoints CNB 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 16. The provisions of this Section 16 (other than the proviso to Section 16.11(a)) 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 CNB 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, 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.

16.2 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.

16.3 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 Subsidiary or Affiliate of Borrower, 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 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 or properties of Borrower or the books or records or properties of any of Borrower's Subsidiaries or Affiliates.

16.4 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.

16.5 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 16.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, 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.

16.6 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 and 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 and 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 and any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons.

16.7 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 from the Collections of Borrower and its Subsidiaries received by Agent, each Lender hereby agrees that it is and shall be obligated to pay to or reimburse Agent for the amount of 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.

16.8 Agent in Individual Capacity

. CNB 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 CNB 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, CNB or its Affiliates may receive information regarding Borrower or its Affiliates and 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 CNB in its individual capacity.

16.9 Successor Agent

. Agent may resign as Agent upon 45 days notice to the Lenders. If Agent resigns under this Agreement, the Required Lenders shall appoint a successor Agent for the Lenders. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders. 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 16 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 45 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

16.10 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 and 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.

16.11 Withholding Taxes

(a) All payments made by Borrower hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, Borrower shall comply with the penultimate sentence of this Section 16.11(a). "Taxes" shall mean, any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments (but excluding any tax imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein measured by or based on the net income or net profits of any Lender) and all interest, penalties or similar liabilities with respect thereto. If any Taxes are so levied or imposed, Borrower agrees to pay the full amount of such 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 16.11(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that Borrower shall not be required to increase any such amounts if the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction); and provided further that Borrower shall not be required to increase any such amounts if the increase in such amounts payable is or pertains to (i) any withholding tax (including backup withholding tax) that is attributable to such person's failure to comply with Section 16.5(b), (ii) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which any "lender" (including, to the extent applicable, and for purposes of this Section 16.11 only, an

Assignee or Participant) is located, (iii) in the case of a foreign lender, any withholding tax that (x) is imposed on amounts payable to such foreign lender at the time such foreign lender becomes a party to this Agreement, (y) is imposed on amounts payable to such foreign lender as a result or consequences of the foreign lender designating a new lending office, or (z) is attributable to such foreign lender's failure to comply with Section 16.11, and (iv) any U.S. federal withholding Taxes imposed under FATCA. Borrower will furnish to Agent as promptly as possible after the date the payment of any Tax is due pursuant to applicable law certified copies of tax receipts evidencing such payment by Borrower.

(b) If a Lender claims an exemption from United States withholding tax, Lender agrees with and in favor of Agent and Borrower, to deliver to Agent:

(i) if such Lender claims an exemption from United States withholding tax pursuant to its portfolio interest exception, (A) a statement of the Lender, 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 or W-8BEN-E, before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower;

(ii) if such Lender claims an exemption from, or a reduction of, withholding tax under a United States tax treaty, properly completed and executed IRS Form W-8BEN before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower;

(iii) if such Lender claims 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, two properly completed and executed copies of IRS Form W-8ECI before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower; or;

(iv) such other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower.

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 reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their

obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Lender agrees promptly to notify Agent and Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender claims an exemption from withholding tax in a jurisdiction other than the United States, Lender agrees with and in favor of Agent and Borrower, to deliver to Agent 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 and at any other time reasonably requested by Agent or Borrower.

Lender agrees promptly to notify Agent and Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If any Lender claims exemption from, or reduction of, withholding tax and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrower to such Lender, such Lender agrees to notify Agent and Borrower of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrower to such Lender. To the extent of such percentage amount, Agent and Borrower will treat such Lender's documentation provided pursuant to Sections 16.11(b) or 16.11(c) as no longer valid. With respect to such percentage amount, Lender may provide new documentation, pursuant to Sections 16.11 (b) or 16.11(c), if applicable.

(e) If any Lender is entitled to a reduction in the applicable withholding tax, Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by subsection (b) or (c) of this Section 16.11 are not delivered to Agent, then Agent may withhold from any interest payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(f) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent did not properly withhold tax from amounts paid to or for the account of any Lender due to a failure on the part of the Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent 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 for all amounts paid, directly or indirectly, by Agent, as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent under this Section 16.11, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant taxing authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (*plus* any penalties, interest or other charges imposed by the relevant taxing authority) in the event that such indemnified party is required to repay such refund to such taxing authority. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

16.12 Collateral Matters.

(a) The Lenders hereby irrevocably 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 7.4 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 to Borrower or its Subsidiaries under a lease 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, or (z) otherwise, the Required Lenders. Upon request by Agent or Borrower at any time, the Lenders will confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 16.12; 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.

(b) Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by Borrower 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.

16.13 Restrictions on Actions by Lenders; Sharing of Payments

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Borrower or any deposit accounts of Borrower 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 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 ratable portion of all such distributions by Agent, such Lender promptly shall (1) 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 (2) 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.

16.14 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.

16.15 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.

16.16 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.

16.17 Field Examinations 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 examination or examination report (each a "Report" and collectively, "Reports") prepared by 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 examination will inspect only specific information regarding Borrower and will rely significantly upon the Books, 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 17.7, 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 to Agent that has not been contemporaneously provided by Borrower 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, 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, 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.

16.18 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 16.7, 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.

16.19 Bank Product Providers

. Each Bank Product Provider shall be deemed a party hereto for purposes of any reference in a Loan Document to the parties for whom Agent is acting; it being understood and agreed that the rights and benefits of such Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's right to share in payments and collections out of the Collateral as more fully set forth herein. In connection with any such distribution of payments and collections, Agent shall be entitled to assume no amounts are due to any Bank Product Provider unless such Bank Product Provider has notified Agent in writing of the amount of any such liability owed to it prior to such distribution.

16.20 [Intentionally Omitted.]

16.21 Legal Representation of Agent

. In connection with the negotiation, drafting, and execution of this Agreement and the other Loan Documents, or in connection with future legal representation relating to loan administration, amendments, modifications, waivers, or enforcement of remedies, Katten Muchin Rosenman LLP ("KMR") only has represented and only shall represent CNB in its capacity as Agent and as a Lender. Each other Lender hereby acknowledges that KMR does not represent it in connection with any such matters.

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 **Counterparts; Electronic Execution**

. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis* .

17.6 **Revival and Reinstatement of Obligations; Certain Waivers** .

(a) If any member of the Lender Group or any Bank Product Provider repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group or such Bank Product Provider in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Product Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group or Bank Product Provider elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group or Bank Product Provider elects to repay,

restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys fees of such member of the Lender Group or Bank Product Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist and (ii) Agent's Liens securing such liability shall be

effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability.

(b) Anything to the contrary contained herein notwithstanding, if Agent or any Lender accepts a guaranty of only a portion of the Obligations pursuant to any guaranty, Borrower hereby waives its right under Section 2822(a) of the California Civil Code or any similar laws of any other applicable jurisdiction to designate the portion of the Obligations satisfied by the applicable guarantor's partial payment.

17.7 Confidentiality

. Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Borrower and its Subsidiaries, their operations, assets, and existing and contemplated business plans 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: (a) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group, (b) 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 17.7, (c) as may be required by statute, decision, or judicial or administrative order, rule, or regulation, (d) as may be agreed to in advance by Borrower or its Subsidiaries or as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, (e) 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), (f) in connection with any assignment, prospective assignment, sale, prospective sale, participation or prospective participations, or pledge or prospective pledge of any Lender's interest under this Agreement, provided that any such assignee, prospective assignee, purchaser, prospective purchaser, participant, prospective participant, pledgee, or prospective pledgee shall have agreed in writing to receive such information hereunder subject to the terms of this Section, and (g) 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. The provisions of this Section 17.7 shall survive for 2 years after the payment in full of the Obligations.

17.8 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.

17.9 Amendment and Restatement

. This Agreement amends and restates in its entirety the Existing Loan Agreement effective as of the date hereof. Anything contained herein to the contrary notwithstanding, this Agreement is not intended to and shall not serve to effect a novation of the "Obligations" (as defined in the Existing Loan Agreement). Instead, it is the

express intention of the parties hereto to reaffirm the indebtedness, obligations and liabilities created under the Existing Loan Agreement which is secured by the Collateral pursuant to the terms of the Loan Documents, as reaffirmed by the reaffirmations required hereunder. Each of the Borrower and the other Loan Parties acknowledges and confirms (x) that the liens and security interests granted pursuant to the Loan Documents secure the applicable indebtedness, liabilities and obligations of the Loan Parties to the Agent and the Lenders under the Existing Loan Agreement, as amended and restated by this Agreement, (y) the Loan Documents shall continue in full force and effect in accordance with their terms unless otherwise amended by the parties thereto, and (z) that the term "Obligations" as used in the Loan Documents (or any other term used therein to describe or refer to the indebtedness, liabilities and obligations of the Loan Parties to the Agent and the Lenders) includes, without limitation, the indebtedness, liabilities and obligations of the Loan Parties under this Agreement and any notes delivered hereunder, and under the Existing Loan Agreement, as amended and restated hereby, as the same may be further amended, modified, supplemented and/or restated from time to time. The Loan Documents and all agreements, instruments and documents executed or delivered in connection with any of the foregoing shall each be deemed to be amended to the extent necessary to give effect to the provisions of this Agreement. Each reference to the "Loan and Security Agreement" in any Loan Document shall mean and be a reference to this Agreement (as further amended, restated, supplemented or otherwise modified from time to time). Cross-references in the Loan Documents to particular section numbers in the Existing Loan Agreement shall be deemed to be cross-references to the corresponding sections, as applicable, of this Agreement. Upon the effectiveness of this Agreement, and on and after the Restatement Effective Date, each reference in the Existing Loan Agreement to "this Agreement", "hereunder", "hereof", "herein", or words of like import, and each reference to the Existing Loan Agreement in any other related document, including any Loan Document as amended hereby, shall mean and be a reference to this Agreement.

17.10 Keepwell

. If the Borrower is a Qualified ECP Guarantor at the time the guarantee or the grant of a security interest under the Loan Documents by any Specified Loan Party becomes effective with respect to any Hedge Obligation, the Borrower hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Hedge Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred by the Borrower without rendering its obligations and undertakings under this Section 17.10 or otherwise under this Agreement voidable under applicable bankruptcy or insolvency laws, and not for any greater amount). The obligations and undertakings of the Borrower under this Section shall remain in full force and effect until the Obligations have been paid and performed in full. The Borrower intends this Section to constitute, and this Section shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Specified Loan Party for all purposes of the Commodity Exchange Act.

[Signature pages to follow.]

IN WITNESS WHEREOF , the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

FRESHPET, INC.,
a Delaware corporation

By: /s/ Richard Kassar
Name: Richard Kassar
Title: Chief Financial
Officer

[SIGNATURE PAGE TO THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT]

CITY NATIONAL BANK,
a national banking association,
as Agent and as a Lender

By: /s/ Garen Papazyan
Name: Garen Papazyan
Title: Senior Vice President

[SIGNATURE PAGE TO THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT]

EXHIBITS AND SCHEDULES

| | |
|-----------------|---|
| Exhibit A-1 | Form of Assignment and Acceptance |
| Exhibit C-1 | Form of Compliance Certificate |
| Exhibit L-1 | Form of LIBOR Notice |
| Exhibit N-1 | Form of Notice of Borrowing |
| Schedule A-1 | Agent's Account |
| Schedule C-1 | Commitments |
| Schedule D-1 | Designated Account |
| Schedule P-1 | Permitted Liens |
| Schedule P-2 | Permitted Holders |
| Schedule R-1 | Real Property Collateral |
| Schedule 2.7(a) | Cash Management Banks |
| Schedule 5.5 | Locations of Inventory and Equipment |
| Schedule 5.7(a) | States of Organization |
| Schedule 5.7(b) | Chief Executive Offices |
| Schedule 5.7(c) | Organizational Identification Numbers |
| Schedule 5.7(d) | Commercial Tort Claims |
| Schedule 5.8(c) | Capitalization of Borrower's Subsidiaries |
| Schedule 5.8(d) | Subscriptions, Options, Warrants or Calls Relating to Shares of Borrower's Subsidiaries' Capital Stock |
| Schedule 5.10 | Litigation |
| Schedule 5.14 | Environmental Matters |
| Schedule 5.16 | Intellectual Property |
| Schedule 5.18 | Deposit Accounts and Securities Accounts |
| Schedule 5.20 | Permitted Indebtedness |

CERTIFICATIONS

I, William B. Cyr, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Freshpet, Inc.;
 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
 4. The registrant's other certifying officer 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the
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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.

Date: November 7, 2017

/s/ William B. Cyr

William B. Cyr

Chief Executive Officer

CERTIFICATIONS

I, Richard Kassar, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Freshpet, Inc.;
 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
 4. The registrant's other certifying officer 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the
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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.

Date: November 7, 2017

/s/ Richard Kassar

Richard Kassar
Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. § 1350,
AS ADOPTED PURSUANT TO § 906
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the filing of the Quarterly Report on Form 10-Q of Freshpet, Inc., a Delaware corporation (the “Company”), for the quarter ended September 30, 2017, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), each of the undersigned officers of the Company certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to such officer’s 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 as of the dates and for the periods expressed in the Report.

Date: November 7, 2017

/s/ William B. Cyr
William B. Cyr
Chief Executive Officer

/s/ Richard Kassar
Richard Kassar
Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.