

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

**FORM 8-K**

**CURRENT REPORT**  
**Pursuant To Section 13 OR 15(d) Of The Securities Exchange Act Of 1934**

Date of Report (Date of earliest event reported): October 28, 2020



**THE DIXIE GROUP, INC.**  
(Exact name of Registrant as specified in its charter)

Tennessee  
(State or other jurisdiction of incorporation)

0-2585  
(Commission File Number)

62-0183370  
(I.R.S. Employer Identification No.)

475 Reed Road Dalton, Georgia  
(Address of principal executive offices)

30720  
(zip code)

(706) 876-5800  
(Registrant's telephone number, including area code)

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

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

**Beginning effective October 28, 2020, the Company and its wholly owned subsidiary TDG Operations, LLC entered into the following three credit facilities, terminating and replacing the current senior secured credit facility with Wells Fargo Capital Finance, LLC.**

Effective October 28, 2020, the Company and its wholly owned subsidiary, TDG Operations, LLC, entered into that certain \$10 million principal amount USDA Guaranteed term loan with AmeriState Bank as lender (the AmeriState Loan), secured by a first mortgage on the Company's Atmore, Alabama and Roanoke, Alabama facilities. The term of the AmeriState Loan is 25 years with a straight- line amortization over the full term of the loan.

Effective October 29, 2020, the Company and its wholly owned subsidiary, TDG Operations, LLC entered into that certain \$15 million principal amount USDA Guaranteed loan under the CARES Act with the Greater Nevada Credit Union as lender (the Greater Nevada Credit Union Loan), secured by a first lien on a substantial portion of the Company's machinery and equipment and a second lien on the Company's Atmore and Roanoke facilities. The term of the loan is 10 years, with straight line amortization over the last 7 years of the term.

Each of the AmeriState and Greater Nevada Credit Union loans bears interest at a minimum 5% rate or 4% above 5-year treasury, to be reset after 5 years at 3.5% above 5-year treasury.

Effective October 30, 2020, the Company and its wholly owned subsidiary, TDG Operations, LLC, entered into that certain \$75 million Senior Secured Revolving Credit Facility with Fifth Third Bank National Association, as lender, secured by a first priority security interest on all accounts receivable and inventory, and providing for borrowing limited by certain percentages of values of the accounts receivable and inventory. The agreement is subject to customary terms and conditions and annual administrative and unused line fees with pricing varying based on excess availability, and a fixed charge coverage ratio each as defined in the agreement. The agreement matures 5 years from the date of close.

Effective October 30, 2020, the Company's current Senior Secured Credit Facility with Wells Fargo Capital Finance, LLC was terminated in accordance with its terms and upon notice to the lender in accordance with the terms of the facility by the Company.

**Item 7.01 Regulation FD Disclosure.**

On November 2, 2020, the Company issued a Press Release attached as Exhibit 99.1, announcing entry into:

- i) the Senior Secured Revolving Credit Facility with Fifth Third Bank National Association;
- ii) the AmeriState loan; and
- iii) the Greater Nevada Credit Union Loan.

As of the date hereof, availability under the Fifth Third Senior Secured Revolving facility is approximately \$45 million.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

[\(10.1\) AmeriState Loan: That certain \\$10 million principal amount secured loan by and between The Dixie Group, Inc. and its wholly-owned subsidiary, TDG Operations, LLC as borrowers and AmeriState Bank, an Oklahoma State Banking Corporation, as lender, dated October 26, 2020, \(the "AmeriState Loan"\).](#)

[\(10.2\) AmeriState Bank Real Estate Mortgage, Security Agreement, Assignment of Rents and Fixture Filing, Escambia County, Alabama, dated October 26, 2020.](#)

[\(10.3\) AmeriState Bank Real Estate Mortgage Security Agreement, Assignment of Rents and Fixture Filing, Randolph County, Alabama, dated October 26, 2020.](#)

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(10.4) Greater Nevada Credit Union Loan: That certain \$15 million principal amount secured fixed asset loan, by and between The Dixie Group, Inc. and its wholly-owned subsidiary, TDG Operations, LLC, as borrowers, and the Greater Nevada Credit Union, as lender, dated October 29, 2020 (the "Greater Nevada Credit Union Loan").

(10.5) Greater Nevada Credit Union Loan Security Agreement: That certain security Agreement entered into pursuant to the Greater Nevada Credit Union Loan, dated October 29, 2020.

(10.6) Fifth Third Senior Secured Revolving Credit Facility: That certain \$75 million Senior Secured Revolving Credit Facility entered into by and between The Dixie Group, Inc. and its wholly-owned Subsidiary, TDG Operations, LLC, as borrowers, and Fifth Third Bank, National Association, as lender, dated October 30, 2020 (the "Fifth Third Senior Revolving Credit Facility").

(10.7) Fifth Third Senior Revolving Credit Facility Security Agreement: That certain security agreement entered into pursuant to the Fifth Third Senior Revolving Credit Facility, dated October 30, 2020.

(99.1) Press Release dated November 2, 2020.

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## **SIGNATURES**

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

Date: November 2, 2020

**THE DIXIE GROUP, INC.**

/s/ Allen L. Danzey

Allen L. Danzey

Chief Financial Officer

**LOAN AGREEMENT**

**Dated as of October 26, 2020**

**between**

**The Dixie Group, Inc., a Tennessee Corporation**

**and**

**TDG Operations, LLC,  
a Georgia Limited Liability Company**

**"Borrowers"**

**and**

**AmeriState Bank,  
an Oklahoma state banking corporation  
"Bank"**

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## LOAN AGREEMENT

THIS LOAN AGREEMENT ("Loan Agreement"), dated effective as of October 26, 2020, is entered into by and between The Dixie Group, a Tennessee corporation, and TDG Operations, LLC, a Georgia limited liability company (collectively, the "Borrowers"), and AmeriState Bank, an Oklahoma state banking corporation (the "Bank").

### RECITALS:

A. Borrowers have requested that the Bank loan to Borrowers the principal sum of \$10,000,000.00, with a final maturity date of October 26, 2045.

B. The Bank is willing to so establish a term loan in the stated principal amount of \$10,000,000.00, with a final maturity date of October 26, 2045 (the "Term Loan").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, the parties agree as follows:

### Article I.

#### CERTAIN DEFINITIONS

When used herein, the following terms shall have the following meanings:

*"Change of Control"* means that (a) Permitted Holders fail to own and control, directly or indirectly, the Stock of The Dixie Group, Inc. representing the right to vote 20% of the total voting rights for the election of members of its Board of Directors, (b) any "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act), other than Permitted Holders, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of the Stock of The Dixie Group, Inc. representing the right to vote 35% of the total voting rights for the election of members of the Board of Directors, (c) a majority of the members of the Board of Directors do not constitute Continuing Directors, or (d) The Dixie Group, Inc. fails to own and control, directly or indirectly, 100% of the Stock of TDG Operations, LLC other than by merger of TDG Operations, LLC into The Dixie Group, Inc..

*"Closing"* or *"Closing Date"* shall mean October 26, 2020.

*"Collateral"* shall have the meaning assigned to that term in Section 3.1 of this Agreement.

*"Continuing Director"* means (a) any member of the Board of Directors who was a director of The Dixie Group, Inc on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by either the Permitted Holders or a majority of the Continuing Directors, but excluding any such individual originally proposed for

election in opposition to the Board of Directors in office at the Closing Date in an actual or threatened election contest relating to the election of the directors of The Dixie Group, Inc. and whose initial assumption of office resulted from such contest or the settlement thereof.

"*Contractual Obligation*" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"*Debt Service Ratio*" means the ratio of net operating income plus depreciation, amortization expense and interest on debt service ("Adjusted Operating Income") to total debt service.

"*Dollar*," "*Dollars*" and the symbol "\$" shall mean lawful currency of the United States of America.

"*Environmental Laws*" shall mean Laws, including without limitation federal, state or local Laws, ordinances, rules, regulations, interpretations and orders of courts or administrative agencies or authorities relating to pollution or protection of the environment (including, without limitation, ambient air, surface water, groundwater, land surface and subsurface strata), and other Laws relating to (i) Polluting Substances or (ii) the manufacture, processing, distribution, use, treatment, handling, storage, disposal or transportation of Polluting Substances.

"*Event of Default*" shall mean any of the events specified in Section 8.1 of this Agreement, and "*Default*" shall mean any event, which together with any lapse of time or giving of any notice, or both, would constitute an Event of Default.

"*GAAP*" shall mean generally accepted accounting principles applied on a consistent basis in all material respects to those principles so applied in the preceding period. Unless otherwise indicated herein, all accounting terms will be defined according to GAAP.

"*Governmental Authority*" means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

"*Guarantor*" shall mean James Randolph, Jr. and Brandy Randolph.

"*Indebtedness*" means and include any and all: (i) indebtedness, obligations and liabilities of the Borrowers to the Bank incurred or which may be incurred or purportedly incurred hereafter pursuant to the terms of this Loan Agreement or any of the other Loan Documents, and any extensions, renewals, substitutions, amendments and increases in amount thereof, including such amounts as may be evidenced by the Note, outstanding standby/performance letters of credit issued by the Bank for the Borrowers' account, if any, and all lawful interest, loan closing fees, service fees, letter of credit fees, facility fees, commitment fees and other similar charges, and all reasonable costs and expenses incurred in connection with the negotiation, preparation, closing, filing and recording of the Loan Documents, including attorney's fees and legal expenses; (ii) all reasonable costs and expenses paid or incurred by the Bank, including attorney's fees, in enforcing or attempting to enforce collection of any Indebtedness and in

enforcing or realizing upon or attempting to enforce or realize upon any collateral or security for any Indebtedness, including interest on all sums so expended by the Bank accruing from the date upon which such expenditures are made until paid, at an annual rate equal to the interest rate provided in the Note; (iii) all sums expended by the Bank in curing any Event of Default or Default of the Borrowers under the terms of this Loan Agreement, the other Loan Documents or any other writing evidencing or securing the payment of the Note together with interest on all sums so expended by the Bank accruing from the date upon which such expenditures are made until paid, at an annual rate equal to the rate of interest specified for the Note; (iv) all overdraft items, return items and ACH obligations and liabilities of the Borrowers owing to the Bank from time to time; and (v) all "Indebtedness", "Obligations" or "Secured Obligations or "Secured Indebtedness" as said terms are defined in the Loan Documents.

"*Laws*" shall mean all statutes, laws, ordinances, regulations, orders, writs, injunctions, or decrees of the United States, any state or commonwealth, any municipality, any foreign country, any territory or possession, or any Tribunal.

"*Lien*" shall mean any pledge, security interest, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of or agreement to give any financing statement or other similar form of public notice under the Laws of any jurisdiction)

"*Loan Documents*" means this Loan Agreement, the Note, the Security Instruments, the Borrowers' Certifications, and any other applicable security agreements, pledge agreements, subordination agreements, financing statements and all other documents, instruments and certificates and resolutions executed and delivered to the Bank by the Borrowers pursuant to the terms, provisions and conditions of this Loan Agreement.

"*Material Adverse Effect*" means a material negative effect on or material impairment of (i) the validity or enforceability of any Loan Document or the rights, benefits or remedies of the Bank under any Loan Document, (ii) the condition (financial or otherwise), operations, business, assets, liabilities or prospects of the Borrowers, or (iii) the ability of the Borrowers to perform or fulfill its obligations under the Loan Documents.

"*Mortgaged Premises*" means the real property and premises more particularly described on Exhibit A and Exhibit B attached hereto.

"*Note*" shall mean the Term Note described in Section 2.2 of this Loan Agreement, together with each and every extension, renewal, modification, rearrangement, replacement, substitution, consolidation and change in form of either thereof which may be from time to time and for any term or terms effected.

"*Person*" means and includes an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, and a government or any department, agency or political subdivision thereof.



"*Permitted Encumbrances*" shall mean:

- (i) liens, if any, granted to Bank to secure the Indebtedness;
- (ii) pledges or deposits to secure the payment of workers' compensation insurance, or funds in connection with workers' compensation, unemployment insurance, pension or social security programs;
- (iii) materialman's, mechanics' or warehousemen's liens, and other liens arising in the ordinary course of business where payment is not yet due or which is being contested in good faith or for which adequate cash reserves have been made;
- (iv) tax liens, assessments, or other governmental levies imposed, if the same are not yet due and payable, or if the same are being contested in good faith and for which adequate cash reserves have been made; and
- (v) liens from good faith deposits to secure public or statutory obligations and deposits such as lease rental deposits, sureties, stays, appeal bonds, customs bonds, or the like, customs, duties or similar charges.

"*Permitted Holder*" means Daniel K. Frierson, his family and their respective spouses, children, grandchildren and any trusts for the sole benefit of any of the foregoing Persons.

"*Polluting Substances*" shall mean all pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes and shall include, without limitation, any flammable explosives, radioactive materials, oil, hazardous materials, hazardous or solid wastes, hazardous or toxic substances or related materials defined in any Environmental Law(s) *provided*, in the event any Environmental Law(s) is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and, *provided* further, to the extent that the Laws of any State or other Tribunal establish a meaning for "hazardous substance," "hazardous waste," "hazardous RCRA/HSWA material," "solid waste" or "toxic substance" which is broader than that specified in any such Environmental Law(s), such broader meaning shall apply.

"*Requirement of Law*" means, as to any Person, any requirement or provision of the charter or organization documents of such Person, or of any law, statute, rule, regulation, code or ordinance, or of any order, decree, judgment, injunction or other determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or to which any of its material properties is subject.

"*Security Agreement*" shall mean the Security Agreement as described in Article III.

"*Security Instruments*" means all financing statements, mortgages, assignments, security agreements, pledge agreements, documents or writings of any and all amendments and supplements thereto, granting, conveying, assigning, transferring or in any manner providing the

Bank with a security interest in the Collateral as security for the repayment of all or any part of the Indebtedness.

"*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).

"*Subsidiary*" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrowers.

"*Taxes*" shall mean all taxes, assessments, fees, or other charges or levies from time to time or at any time imposed by any Laws or by any Tribunal.

"*Term Note*" shall have the meaning assigned to it in Section 2.2.

"*Term Loan*" shall have the meaning assigned to it in Recital B, above.

"*Term Loan Maturity Date*" shall mean October 26, 2045 (insofar as the Term Loan is concerned), unless otherwise extended in writing by the Bank.

"*Tribunal*" means any municipal, state, commonwealth, federal, foreign, territorial or other sovereign, governmental entity, governmental department, court, commission, board, bureau, agency or instrumentality.

## Article II.

### COMMITMENTS

2.1 Loan Commitment. The Bank agrees, upon the terms and subject to the conditions hereinafter set forth, to make a loan in the principal amount of \$10,000,000.00 (hereinafter referred to as the "Commitment") which sum shall be utilized by Borrowers as follows:

- A. to refinance debt \$ 9,432,500
- B. for fees and costs associated with the Term Loan \$ 567,500 and the transactions contemplated hereby

2.2 Term Note. On the Closing Date, the Borrowers shall execute and deliver to the order of the Bank the Borrowers' Term Note in the principal amount of \$10,000,000.00, as extended, renewed, restated, changed in form, rearranged, consolidated or otherwise modified from time to time. All of the payment terms related to Borrowers' Term Note including the applicable

interest rate and rate adjustments, payment amounts and due dates and prepayment provisions shall be as set forth in the Term Note executed by Borrowers in favor of Bank of even date herewith, the terms of which are expressly incorporated by reference herein.

2.3 Loan Origination Fee. The Borrowers agrees to pay Lender at closing a loan origination fee equal to \$150,000.00.

### **Article III. SECURITY**

3.2 Collateral. The repayment of the Indebtedness shall be secured by a first priority and senior mortgage lien encumbering the interest of Borrower, TDG Operations, LLC (which is intended and represented by Borrowers to comprise 100% of the Mortgaged Premises) in the Mortgaged Premises, pursuant to that certain Real Estate Mortgage, Security Agreement, Assignment of Rents, and Fixture Filing (the "Mortgage") from the Borrower, TDG Operations, LLC, as mortgagor, to and in favor of the Bank, as mortgagee and secured party, dated effective as of even date herewith covering the Mortgaged Premises (such instrument, together with all future amendments, supplements, restatements, extensions and other modifications thereof, collectively, the "Collateral").

3.3 Additional Collateral. If, at any time during the term of this Agreement, Bank, in good faith, believes that there has occurred a Material Adverse Effect, including the payment, when due, of any of the payments due or to become due on the term Note, or of Bank's ability to protect its interests under this Agreement by reliance on its rights under this Agreement and any of the Collateral documents, Borrowers will, within thirty (30) days after Bank's request, provide such additional collateral as Bank shall require to bring the loan to value ratio back to no more than 80%. Borrowers will execute all documents and instruments that are required to perfect Bank's security interest in such additional collateral. The security interest in any such additional collateral will secure all of the Indebtedness.

3.4 Fixture Filings. The Bank is authorized to file such fixture filings, notices and other documents and instruments as it shall deem necessary or appropriate to perfect and continue the perfection of the security interests created by the Security Instruments. The Borrowers hereby acknowledges that all of the Collateral is granted to the Bank as security for the repayment of all of the Indebtedness and obligations of the Borrowers to the Bank. If any portion of the Indebtedness remains unsatisfied, the Bank shall retain its security interest in all of the Collateral until the remaining Indebtedness is paid in full, even if the value of the Collateral far exceeds the amount of Indebtedness outstanding.

3.5 Additional Documents or Instruments. The Borrowers agrees to deliver to the Bank such other reports, certificates, data and writings the Bank may request to evidence, perfect, more fully evidence or perfect or evaluate the Bank's continuing security interest in the Collateral.

## Article IV.

### CONDITIONS PRECEDENT TO LOANS

4.1 Conditions Precedent to Initial Loan. The obligation of the Bank to make the advance under the Loan Commitment is subject to the satisfaction of all of the conditions and requirements set forth in the Form 4279-3, Conditional Commitment, and Attachments to Form RD 4279-3, issued by the United States Department of Agriculture, Rural Development dated August 28, 2020, the terms and conditions of which are incorporated herein as if fully set forth (such document shall be referred to herein as the "USDA Approval"). Additionally, Bank's obligation to make the advance under the Loan Commitment is subject to the following:

A. No Default. No Event of Default or Default shall exist on the Closing Date.

B. Representations and Warranties. The representations, warranties and covenants set forth in Article VII shall be true and correct on and as of the Closing Date, with the same effect as though made on and as of the Closing Date.

C. Borrowers' Certificate. The Borrowers shall have delivered to the Bank a Certificate, dated as of the Closing Date, certifying (i) to the matters covered by the conditions specified in subsections (a) and (b) of this Section 4.1, (ii) that the Borrowers has performed and complied with all of the conditions and requirements of the USDA Approval and any other agreements and conditions required to be performed or complied with by it prior to or on the Closing Date, (iii) to the name and signature of any officer of the Borrowers authorized to execute and deliver the Loan Documents and any other documents, certificates or writings and to borrow under this Loan Agreement, and (iv) to such other matters in connection with this Loan Agreement which the Bank shall determine to be advisable. The Bank may conclusively rely on such Certificate until it receives notice in writing to the contrary.

D. Loan Documents/Security Instruments. The Borrowers shall have delivered to the Bank the Loan Agreement, Mortgage, and other Loan Documents, appropriately executed by all parties, witnessed and acknowledged to the satisfaction of the Bank and dated as of the Closing Date, together with such financing statements, and other documents as shall be necessary and appropriate to perfect the Bank's security interests in the Collateral covered by said Security Instruments.

E. Note. The Borrowers shall have delivered the Term Note to the order of the Bank, appropriately executed.

F. Fees and Costs. The Borrowers shall have paid all fees and expenses in connection with the transactions contemplated by this Agreement and the USDA Approval including but not limited to any USDA Guarantee fees, appraisal fees,

attorney fees, title insurance fees, any environmental inspection fees, filing fees and any other fees or expenses.

G. Title Insurance. The Bank shall have received a satisfactory policy of mortgagee's title insurance based upon an attorney's opinion covering the Mortgaged Premises and issued for at least the face amount of the Note by companies approved by the Bank, insuring the Bank's first mortgage lien and insuring that all funds advanced under the Note will be secured by the first lien of the Mortgage, subject only to such exceptions as are approved by the Bank. Such title insurance policy shall include such endorsements deemed reasonably necessary by Bank. Prior to issuance of such policy, the Bank shall have received a commitment for such policy, together with copies of all documents evidencing restrictive covenants, easements, encumbrances, and other exceptions of record covering the Mortgaged Premises. The title policy shall not include an exception based on mechanics' and materialmen's liens, any exception based on discrepancies, conflicts in boundary lines, shortage in area or other facts which would be disclosed by a proper survey, or any exception based on violations of restrictive covenants of record.

H. Litigation Statement. The Bank shall have received a written statement from Borrowers as to (i) the sufficiency of any insurance currently in effect through which any pending litigation may be resolved or satisfied or (ii) which will indicate that any such pending litigation will not have a material adverse effect upon the Mortgaged Premises or on Borrowers' ability to repay the Term Note.

I. Use Restrictions. The Bank shall have received satisfactory evidence that the use of the Mortgaged Premises will comply with all applicable zoning, use, building and requirements imposed by any governmental authority or private restriction.

J. Inspection. The Bank shall have inspected the Collateral to its satisfaction.

K. Financial Statements. The Bank shall have received current financial statements on Borrowers.

L. Hazard Insurance. The Bank shall have received proof of Borrowers' purchase of and the issuance by an insurer agreeable to Bank of hazard insurance on the Mortgaged Premises and the Collateral with bank named as loss payee in an amount at least equal to the amount of the Term Note or the replacement value of the Collateral, whichever is greater. Such hazard insurance shall insure against loss from fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk during construction and property damage.

M. Worker's Compensation Insurance. The Bank shall have received proof of Borrowers' purchase of and the issuance by an insurer agreeable to Bank of Worker's Compensation Insurance in accordance with applicable state law.

N. Appraisal. Bank shall have received, at Borrowers' expense, a current FIRREA-conforming appraisal of the Mortgaged Premises in full compliance with the Bank's lending policy and other requirements and supporting a fair market value of at least \$12,500,000, excluding any value attributed to Borrowers' business.

O. Survey. The Bank shall have received, at Borrowers' sole expense, a current survey of the entire tract of the Mortgaged Premises complying with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by the American Land Title Association ("ALTA") and the National Society of Professional Surveyors ("NSPS") in 2005, as amended or modified thereafter, accompanied by surveyor's certificate and showing such state of facts as a detailed physical inspection of the Mortgaged Premises would reveal and prepared by a licensed/registered land surveyor acceptable to the Bank and the title insurer incorporating the complete and exact legal description of such Mortgaged Premises (including the courses and measured distances of the exterior property lines thereof, the total square foot are thereof, location of the Project and dimensions thereof at the ground surface level and the distance therefrom to the facing exterior property lines of the Mortgaged Premises, as applicable, and the location and number of parking spaces, as and if applicable, and showing all improvements, out boundaries and lot lines thereof, all building lines, setback lines and restrictions, adjoining roadways and streets, alleys and easements pertaining thereto (with appropriate notes concerning the dates and recording data of all instruments of record, if any, creating the same), the location of encroachments thereon or onto adjacent property and otherwise, flood hazard certificate and otherwise in form and substance satisfactory to Bank, its legal counsel and the title insurer, including, without limitation, the certificate.

P. Authority/Organization. The Bank shall have received a certified copy of the certificate of Borrowers' organizational documents filed with the Secretary of State for the state in which each Borrower is organized and the bylaws and limited liability company operating agreement (as applicable) for each Borrower, complete with all amendments thereto, and certified copies of all resolutions and other documents required to authorize the execution, delivery and performance of the Loan Documents by Borrowers, all in form and substance satisfactory to the Bank. The Bank shall also have received satisfactory written evidence that the Borrowers are duly organized, validly existing and in good standing under the laws of the state in which each is organized.

Q. Environmental. At the request of Bank, Borrowers shall have obtained and furnished to the Bank a Phase II environmental report on the Mortgaged Premises, satisfactory in form, scope and substance to the Bank.

R. USDA Guaranty Fee. Borrowers shall pay the USDA guaranty fee of \$210,000.

S. Other Information. The Bank shall have received such other information as the Bank might reasonably require.

T. Loan Note Guarantee. The issuance by the USDA of its Loan Note Guarantee in an amount equal to at least 70% of the face amount of the Term Note.

U. Flood Certification. The Bank shall have received a completed flood hazard certificate on FEMA Form 81-93 evidencing that the Mortgaged Premises are not located in any flood plain or special flood hazard area, or (ii) alternatively, Borrowers shall furnish evidence satisfactory to the Bank that flood insurance is being issued by a reputable insurer concurrent with the Closing Date on the applicable portion of the Mortgaged Premises not certifiable under clause (i) above in scope and substance reasonably acceptable to the Bank and in compliance with mortgage loan flood plain banking rules and regulations applicable thereto and to the Bank.

V. Closing Opinion. Legal counsel for Borrowers shall have delivered to the Bank a closing opinion letter covering customary legal matters concerning Borrowers and the Loan Documents in form, scope and substance reasonably acceptable to Bank.

W. Tangible Equity. Borrowers must demonstrate to Bank's satisfaction that, as of the Closing Date, they have at least 10% tangible balance sheet equity. Tangible balance sheet equity will be determined based upon Borrowers' consolidated balance sheet prepared in accordance with Generally Accepted Accounting Principles (GAAP) and will not include subordinated debt, intangible assets, bargain purchase gains or appraisal surplus. Tangible balance sheet equity must be met in the form of either cash or tangible earning assets contributed to Borrowers' business and reflected on Borrowers' balance sheet.

## Article V

### AFFIRMATIVE COVENANTS

The Borrowers covenants and agrees with the Bank that from the date hereof and so long as this Loan Agreement is in effect (by extension, amendment or otherwise) and until payment in full of all Indebtedness and the performance of all other obligations of the Borrowers under this Loan Agreement, unless the Bank shall otherwise consent in writing:

5.1 Statements and Reports. The Borrowers shall maintain a standard system of accounting and shall furnish to the Bank as soon as practicable, the following:

A. Borrowers' Annual Financial Statements. The Borrowers must obtain financial statements annually compiled by a certified public accountant, prepared in accordance with GAAP, and submit them to the Bank within 90 days of the business' fiscal year end. Financial statements will contain, at a minimum, a balance sheet and a profit and loss statement reflecting the financial condition of the Borrowers as of its year end or quarter end, as the case may be. Borrowers providing bank with copies of the timely online public filings with the Securities Exchange Commission (the "SEC") by The Dixie Group, Inc. shall satisfy this requirement. TDG Operations, LLC does not produce separate financial statements as such are consolidated with The Dixie Group, Inc. The Bank is responsible for obtaining all required financial statements from the

Borrowers, analyzing them, and providing copies of statements with a detailed written analysis to USDA Rural Development within 120 days.

B. Borrowers' Annual Income Tax Returns. The Borrowers shall, within 30 days of the due date or with thirty days of any extension thereof, provide Bank a copy of its annual income tax return in which TDG Operations, LLC is consolidated with The Dixie Group, Inc..

5.2 Intentionally Left Blank.

5.3 Financial Covenant Compliance Certificate. As soon as practicable after the end of each calendar year and in any event within ninety (90) days following the close of each calendar year, commencing as of March 31, 2021, for the calendar year ending December 31, 2020, the Borrowers shall deliver to Bank a certificate, in the form set forth in Exhibit C attached hereto, certifying that Borrowers are in compliance with all of the applicable Financial Covenants set forth in Sections 5.12 and 5.13.

5.4 Inspection/ Field Audits/Examinations. Borrowers will keep complete and accurate books and records with respect to its obligations to Bank and others and will permit employees and representatives of the Bank (including the independent contractors thereof), upon reasonable notice, to audit, inspect and examine the files and records of Borrowers during normal business hours to confirm compliance by the Borrowers with the provisions of this Loan Agreement. All such records shall be at all times kept and maintained at the principal offices of Borrowers. Bank agrees for itself, its employees, representatives and contractors to maintain the confidentiality of all information it may inspect or review under this Section and shall only utilize any such information for the limited purposes of monitoring compliance with the requirements of this Loan Agreement, evaluating the value of the collateral and monitoring the financial condition of Borrowers.

5.5 Maintenance of Legal Existence. The Borrowers will do or cause to be done all things necessary to preserve and keep in full force and affect its legal existence, rights and franchises and will continue to conduct and operate its business substantially as being conducted and operated presently. The Borrowers will remain qualified to conduct business in the jurisdiction where the Mortgaged Premises are located.

5.6 Notice of Default. Immediately upon Borrowers becoming aware of any condition or event which constitutes an Event of Default or Default or any default or event of default under any other loan, mortgage, financing or security agreement, the Borrowers will give the Bank a written notice thereof specifying the nature and period of existence thereof and what actions, if any, the Borrowers is taking and proposes to take with respect thereto.

5.7 Notice of Litigation. Immediately upon becoming aware of the existence of any action, suit or proceeding at law or in equity before any Tribunal, an adverse outcome in which would (i) materially impair the ability of the Borrowers to carry on its business substantially as now conducted, (ii) materially and adversely affect the condition (financial or otherwise) of the Borrowers, or (iii) result in monetary damages in excess of \$5,000,000.00, the Borrowers will give



the Bank a written notice specifying the nature thereof and what actions, if any, the Borrowers is taking and proposes to take with respect thereto.

5.8 Notice of Claimed Default. Immediately upon becoming aware that the holder of any note or any evidence of indebtedness or other security of the Borrowers has given notice or taken any action with respect to a claimed default or event of default thereunder, if the amount of the note or indebtedness exceeds \$1,000,000.00, the Borrowers will give the Bank a written notice specifying the notice given or action taken by such holder and the nature of the claimed default or event of default thereunder and what actions, if any, the Borrowers is taking and proposes to take with respect thereto.

5.9 Change of Management/Business Purpose. Within five (5) days after any change in senior officers, directors or management of the Borrowers, the Borrowers shall give written notice thereof to the Bank, together with a description of the reasons for the change and a reasonably detailed management succession plan for the Bank's review. This requirement may be satisfied with required SEC filings relative to such events that are provided to Bank by Borrower.

5.10 Requested Information. With reasonable promptness, the Borrowers will give the Bank such other data and information relating to the Borrowers as from time to time may be reasonably requested by the Bank.

5.11 Maintenance of Employee Benefit Plans. Borrowers will maintain each employee benefit plan as to which it may have any liability or responsibility in compliance with ERISA and all other Laws applicable thereto.

5.12 Payment of Indebtedness. The Borrowers hereby agrees to pay, when due and owing, all Indebtedness, whether or not evidenced by the Note.

5.13 Debt-to-Net Worth Ratio. Borrowers shall maintain a Debt-to-Net Worth Ratio of not more than 9.1 to 1.0 and shall report thereon to Bank on an annual basis beginning with the year ended December 31, 2020. "Debt-to-Net Worth Ratio" shall be defined as the Borrowers' combined total liabilities divided by Borrowers' combined net worth as of the last day of each calendar year.

5.14 Debt Service Coverage Ratio. The Borrowers will maintain at all times a combined Debt Service Coverage Ratio of not less than 1.2 to 1.0, tested annually beginning December 31, 2021.

5.15 Permits, Authorizations and Approvals. Borrowers will obtain and maintain in effect all permits and licenses which are (i) necessary for it to own and/or operate its business and the Mortgaged Premises, (ii) material to its business, properties, operations or condition, financial or otherwise, and/or (iii) necessary for it to carry on its business as contemplated to be conducted. Borrowers will deliver a copy of such permits and licenses to the Bank upon request and/or a copy of each renewal, modification, supplement or amendment of any such permit. Borrowers will notify the Bank within thirty (30) days of any notice of, threat to or proceedings to revoke, suspend, withdraw, or adversely affect any permit required to be maintained hereby, and of any

violation thereof or of any operation or activity which violates or is not allowed by any such permit.

5.16 Compliance With Other Laws. Borrowers shall comply with all applicable laws, rules, regulations, and all orders of any governmental authority applicable to it or any of its property, business operations or transactions, a breach of which could have a material adverse effect.

5.17 Insurance. Borrowers shall maintain insurance of types and in amounts on its properties, assets and business, now owned or hereafter acquired, against such casualties, risks and contingencies, and in such types and amounts as are consistent in the industry and/or are consistent with the terms of any Loan Documents. All hazard insurance policies shall name the Borrowers and the Bank as loss payees, as their respective interest may appear, and shall contain a standard mortgage endorsement acceptable to the Bank. All liability insurance policies shall name as an additional insured the Bank. All providers of insurance and policies, including coverage, amounts, deductibles and exclusions, under this Section shall be subject to approval by Bank.

5.18 Title to Assets and Maintenance. Borrowers shall defend and maintain title to all its material properties and assets. Borrowers shall keep its assets, both real and personal, in good order and condition consistent with industry practice and shall make all necessary repairs, replacements and improvements required by the Loan Documents.

## Article VI

### NEGATIVE COVENANTS

The Borrowers covenant and agree with the Bank that from the date hereof and so long as this Loan Agreement is in effect (by extension, amendment or otherwise) and until payment in full of all Indebtedness and the performance of all other obligations of the Borrowers under this Loan Agreement, unless the Bank shall otherwise consent in writing:

6.1 Limitation on Liens. Borrowers will not create or suffer to exist any Lien upon any of the Collateral except (i) Liens in favor of the Bank securing the Indebtedness; (ii) Liens (including statutory tax liens to the extent not delinquent) arising in the ordinary course of business for sums not due or sums being contested in good faith and by appropriate proceedings and not involving any deposits, advances, borrowed money or the deferred purchase price of property or services; and (iii) Liens expressly permitted to exist under the terms of any of the Security Instruments.

6.2 Disposition/Negative Pledge regarding Encumbrance of Collateral and Other Assets. Borrowers will not sell or encumber any of the Collateral without first obtaining the Bank's and USDA's written consent thereto nor will Borrowers sell, lease, transfer, mortgage, pledge, grant a security interest in (including to entities related to the Borrowers) or in any manner encumber Borrowers' other fixed assets, without first obtaining the Bank's written consent thereto.

6.3 Intentionally Left Blank.

6.4 Limitation on Fixed Asset Purchases. Borrowers will not invest in additional fixed asset purchases in an annual aggregate of more than \$5,000,000 without concurrence of the Bank. Borrowers will not lease, sell, transfer, or otherwise encumber fixed assets without the concurrence of the Bank.

6.5 Merger, Consolidation, Acquisition, etc. Borrowers will not merge or consolidate with or into any other Person, or permit any Person to merge into the Borrowers, or acquire all or substantially all of the assets or properties or capital stock of any other Person, or adopt or effect any plan of reorganization, recapitalization, liquidation or dissolution; or acquire any properties or assets with the prior written consent of Bank; provided, however, Borrowers may enter into letters of intent pertaining to merger, consolidation or acquisition subject to obtaining the Bank's written consent (which consent shall not be unreasonably withheld) thereto prior to consummation of the transactions contemplated by such letter(s) of intent.

6.6 Change of Control. Borrowers will not permit any Change of Control without the prior written consent of Bank.

6.7 Change of Fiscal Year. Borrowers will not change its fiscal year from its present 52/53 week fiscal year ending between December 15 and January 15.

6.8 Change of Business. The Borrowers will not engage in any business activity substantially different from or unrelated to present business activities and operations.

6.9 Certificate of Formation; Partnership Agreement and Assumed Names. Borrowers will not amend, alter, modify or restate their certificates of formation in any way which would: (i) change the name or adopt a trade name for the Borrowers; or (ii) in any manner adversely affect the Borrowers' obligations or covenants to the Bank hereunder.

6.10 Other Agreements. Borrowers will not enter into or permit to exist any agreement which: (i) would cause an Event of Default or a Default hereunder; or (ii) contains any provision which would be violated or breached by the performance of Borrowers' obligations hereunder or under any of the other Loan Documents.

6.11 Compensation of Officers and Directors. Compensation of officers and directors will be limited to an amount that, when taken, will not adversely affect the repayment ability of the Borrowers. This amount shall be set annually by shareholder vote on Borrowers' annual compensation plan.

6.12 Outside Loans and Investments. Except for the payment of taxes on stock grants in accordance with the Borrowers' annual compensation plan and in compliance with SEC rules, any loans or investments to directors, officers, or affiliates require the prior written consent of the Bank. Loans to any Borrower from directors, officers or affiliates must be subordinated to the Indebtedness with no payments to be made unless the Term Note is current and in good standing.

6.13 Co-signing/Guaranteeing Obligations of Others. The Borrowers will refrain from co-signing or otherwise becoming liable for obligations or liabilities of others.

6.14 Environmental Laws. The Borrowers will not cause any violation of applicable Environmental Laws, nor permit any tenant of any portion of the Mortgaged Premises to cause such a violation, nor permit any environmental lien to be placed on any portion of the Mortgaged Premises, while the Borrowers maintains control of the Mortgaged Premises. The Borrowers and its successors and assigns, agree to defend, indemnify and hold harmless the Bank and its directors, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns, from and against any and all claims, demands, judgments, settlements, damages, actions, causes of actions, injuries, administrative orders, consent agreements and orders, liabilities, penalties, costs, including, but not limited to, any cleanup costs, and all expenses of any kind whatsoever, including claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the activities of Borrowers arising out of the actual, alleged or threatened discharge, dispersal, release, storage, treatment, generation, disposal or escape of any Polluting Substances; or the use, specifications, or inclusion of any product, material or process containing chemicals, the failure to detect the existence or proportion of chemicals in the soil, air, surface water or groundwater, or the performance or failure to perform the abatement of any pollution source or the replacement or removal of any soil, water, surface water, or groundwater-containing chemicals. The Borrowers and its successors and assigns, shall bear, pay and discharge when and as the same becomes due and payable, any and all such judgments or claims for damages, penalties or otherwise against the Bank as described herein, shall hold the Bank harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth herein. It is agreed that if, and as often as, the Bank is required to become involved in any action or proceeding commenced by any governmental authority or any other Person with respect to storage, disposal or cleanup of any Polluting Substances on the Mortgaged Premises, the Borrowers shall pay to the Bank its reasonable attorney's fees together with all court costs or other disbursements relating to the Mortgaged Premises, which sums shall be secured by the Collateral. The obligation defined in this paragraph applies to the Borrowers' tenure of ownership related to the Mortgaged Premises.

6.15 Distributions/Dividends. Dividends and other distributions of earnings will be limited to an amount that, when taken, will not adversely affect the repayment ability of the Borrowers. No dividend payments or other distributions of earnings will be made unless (i) Borrowers have earned an after-tax profit in the preceding fiscal year; (ii) the Borrowers are and will remain in compliance with the covenants and conditions of the Loan Agreement and the Conditional Commitment; and (iii) all Borrowers debts are paid to current status.

## **ARTICLE VII**

### **REPRESENTATIONS AND WARRANTIES**

To induce the Bank to enter into this Loan Agreement and in consideration thereof, the Borrowers incorporate by reference herein all of the representations and warranties set forth in Borrowers' Certification of even date herewith and, further, represent, warrant and covenant as follows:

7.1 Litigation. There is no action, suit, investigation or proceeding threatened or pending before any Tribunal against or affecting the Borrowers or any properties or rights of the Borrowers, which, if adversely determined, would result in a Material Adverse Effect on Borrowers. The Borrowers are not in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any Tribunal.

7.2 Conflicting Agreements and Other Matters. The Borrowers are not in default in the performance of any obligation, covenant, or condition in any agreement to which it is a party or by which it is bound. The Borrowers is not a party to any contract or agreement or subject to any charter or other corporate restriction which materially and adversely affects its business, property or assets, or financial condition. The Borrowers is not a party to or otherwise subject to any contract or agreement which restricts or otherwise affects the right or ability of the Borrowers to execute the Loan Documents or the performance of any of their respective terms. Neither the execution nor delivery of any of the Loan Documents, nor fulfillment of nor compliance with their respective terms and provisions will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any Lien (except those created by the Loan Documents) upon any of the properties or assets of the Borrowers pursuant to, or require any consent, approval or other action by or any notice to or filing with any Tribunal (other than routine filings after the Closing Date with the Securities and Exchange Commission, any securities exchange and/or state blue sky authorities) pursuant to any award of any arbitrator, or any agreement, instrument or Law to which the Borrowers is subject.

7.3 Financial Statements. The financial statements of Borrowers furnished to the Bank have been prepared in accordance with GAAP accounting principles, show all material liabilities, direct and contingent of a type reflected on such financial statements, and fairly present the financial condition of the Borrowers and the results of their operations for the periods then ended, and since such date there has been no material adverse change in the business, financial condition or operations of the Borrowers.

7.4 Purposes. The Borrowers is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) and no part of the proceeds of any borrowing hereunder 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. If requested by the Bank, the Borrowers will furnish to the Bank a statement in conformity with the requirements of Federal Reserve Form U-1, referred to in Regulation U, to the foregoing effect. Neither the Borrowers nor any agent acting on behalf thereof has taken or will take any action which might cause this Loan Agreement or the Note to violate any regulation of the Board of Governors of the Federal Reserve System (including Regulations G, T, U and X) or to violate any Securities Laws, state or federal, in each case as in effect now or as the same may hereafter be in effect.

7.5 Compliance with Applicable Laws. The Borrowers is in material compliance with all Laws, ordinances, rules, regulations and other legal requirements applicable thereto and the

businesses conducted thereby, the violation of which could or would have a Material Adverse Effect on Borrowers' business condition, financial or otherwise.

7.6 Enforceability. Each Loan Document to which Borrowers are a party constitutes a legal, valid and binding obligation of the Borrowers enforceable against the Borrowers in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

7.7 No Legal Bar. The execution, delivery and performance of the Loan Documents, the Security Instruments and the borrowings hereunder will not violate any Requirement of Law or any Contractual Obligation of the Borrowers (except those as to which waivers or consents have been obtained and those which would not reasonably be expected to have a Material Adverse Effect), and will not result in, or require, the creation or imposition of any Lien on any of its respective properties or revenues (except those created by the Loan Documents) pursuant to any Requirement of Law or Contractual Obligation. The Borrowers is not in default under or with respect to any of its Contractual Obligations in any respect that has had or would reasonably be expected to have a Material Adverse Effect.

7.8 Title to Collateral; Authority. Borrowers have full power, authority and legal right to own and operate the properties which it now owns and operates, including the properties it will acquire as part of this Agreement, and to carry on the lines of business in which it is now engaged, and has good and marketable title to the Collateral subject to no Lien of any kind except Liens permitted by this Agreement. Borrowers have full power, authority and legal right to execute and deliver and to perform and observe the provisions of this Agreement and the other Loan Documents. Borrowers further represents to Bank that any and all after acquired interest in any one or more of the Collateral being concurrently or subsequently assigned of record to Borrowers are and shall be deemed encumbered by the Security Agreement in all respects.

7.9 Disclosure. Neither this Agreement nor any other Loan Document or writing furnished to Bank by or on behalf of Borrowers in connection herewith contains any untrue statement of a material fact nor do such Loan Documents and writings, taken as a whole, omit to state a material fact necessary in order to make the statements contained herein and therein not misleading. There is no fact known to Borrowers that is not reflected in the financial statements provided to Bank which materially adversely affects its assets or in the future may materially adversely affect the business, property, assets or consolidated financial condition of Borrowers which has not been set forth in this Agreement, in the Loan Documents or in other documents furnished to Bank by or on behalf of Borrowers prior to the date hereof in connection with the transactions contemplated hereby.

7.10 Due Organization/Good Standing. Borrowers are duly organized, validly existing, and in good standing as a corporation and limited liability company, respectively, under the laws of their respective states of formation.

7.11 Authorization. Borrowers have the necessary capacity and authority to enter into this Agreement, the Term Note, and the Security Instruments and to perform and carry out the terms and provisions hereof. The authorized signatory of each of the Borrowers has the power and authority to execute singly and deliver this Agreement, the Term Note, the Security Instruments described or defined herein or contemplated hereby.

## ARTICLE VIII

### EVENTS OF DEFAULT

8.1 Events of Default. The following events shall constitute events of default (herein called "Events of Default"), whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of Law or otherwise:

A. The Borrowers shall fail to make any payment or mandatory payment of principal or interest upon the Note, or fail to pay any other Indebtedness within fifteen (15) days after the same shall become due and payable (whether by extension, renewal, acceleration or otherwise); or

B. Any representation or warranty of the Borrowers made herein or in any writing furnished in connection with or pursuant to any of the Loan Documents shall have been false or misleading in any material respect on the date when made; or

C. The Borrowers shall fail duly to observe, perform or comply with any covenant, agreement or term contained in this Loan Agreement or any of the Loan Documents and such default or breach shall have not been cured or remedied within thirty (30) days following receipt of notice thereof from the Bank; or

D. The Borrowers shall default in the payment of principal or of interest on any other obligation for money borrowed or received as an advance (or any obligation under any conditional sale or other title retention agreement, or any obligation issued or assumed as full or partial payment for property whether or not secured by purchase money Lien, or any obligation under notes payable or drafts accepted representing extensions of credit) beyond any grace or curative period provided with respect thereto, or shall default in the performance of any other agreement, term or condition contained in any agreement under which such obligation is created (or if any other default under any such agreement shall occur and be continuing beyond any period of grace provided with respect thereto) if the effect of such default is to cause, or to permit the holder or holders of such obligation (or a trustee on behalf of such holder or holders) to cause such obligation to become due prior to its date of maturity and such default results in a Material Adverse Effect; or

E. Any of the following: (i) any of the Borrowers shall make an assignment for the benefit of creditors, become insolvent or admit in writing its inability to pay its debts generally as they become due; or (ii) an order, judgment or decree is entered adjudicating any of the Borrowers bankrupt or insolvent; or (iii) any of the Borrowers shall petition or apply to any tribunal for the appointment of a trustee, receiver or liquidator of any of the Borrowers or of any substantial part of the assets of any of the Borrowers or shall commence any proceedings relating

to any of the Borrowers under any bankruptcy, reorganization, compromise, arrangement, insolvency, dissolution, readjustment of debts, dissolution, or liquidation law of any jurisdiction, whether now or hereafter in effect; or (iv) any such petition or application shall be filed, or any such proceedings shall be commenced, against any of the Borrowers and any of the Borrowers by any act shall indicate its approval thereof, consent thereto or acquiescence therein, or an order, judgment or decree shall be entered appointing any such trustee, receiver or liquidator, or approving the petition in any such proceedings, and such order, judgment or decree shall remain unstayed and in effect for more than ninety (90) days; or (v) any order, judgment or decree materially and adversely affecting any of the Borrowers or the Collateral shall be entered in any proceedings against Borrowers or the Collateral and such order, judgment or decree shall remain unstayed and in effect for more than sixty (60) days; or (vi) any final judgment on the merits for the payment of money in excess of \$500,000.00, in the aggregate, not adequately covered by insurance shall be outstanding against any of the Borrowers, and such judgment shall remain unstayed and in effect and unpaid for more than sixty (60) days; or (vii) any of the Borrowers shall fail to make timely payment or deposit of any amount of tax required to be withheld by Borrowers and paid to or deposited to or to the credit of the United States of America pursuant to the provisions of the Internal Revenue Code of 1986, as amended, or any taxing jurisdiction in which Borrowers conduct business in respect to any and all wages and salaries paid to employees of Borrowers; or

F. Any Reportable Event (as defined in ERISA and/or the Internal Revenue Code) in connection with any Plan described in Section 6.13 which Bank determines in good faith might constitute grounds for the termination of a Plan therein described or for the appointment by the appropriate United States District Court of a trustee to administer any such Plan shall have occurred and be continuing thirty (30) days after written notice to such effect shall have been given to Borrowers by Bank, or any such Plan shall be terminated, or a trustee shall be appointed by an appropriate United States District Court to administer any such Plan or the Pension Benefit Guaranty Corporation shall institute proceedings to terminate any such Plan or to appoint a trustee to administer any such Plan and any such event causes a Material Adverse Effect on Borrowers;

G. Any default or event of default occurs under any of the other Loan Documents, and such default or event of default shall not have been cured or remedied within thirty (30) days following receipt of notice thereof from the Bank, or if such default cannot be cured within such 30-day period, Borrowers have not initiated such cure within the 30-day period and diligently pursued such cure to completion within 90 days following receipt of notice from the Bank, excepting default in any payment obligations; or

H. Any failure by a Guarantor to comply with any terms, covenants or conditions of their Guaranty Agreement and/or such Guarantor's failure to make any payment when due of any debt or obligation owed to Bank; or

I. Substantial uninsured damage to or destruction of the Mortgaged Premises or any total or partial taking of any Improvements on the Mortgaged Premises such that it would constitute a material taking by rights of eminent domain without compensation in amounts satisfactory to the Bank; or



J. The death, dissolution or loss of legal existence or capacity of any of the Borrowers or any Guarantor; and

K. A default (beyond and after expiration of applicable notice and cure periods) by any affiliate of Borrowers in the performance or observance of its obligations under its loan agreement, note or other loan documents with Bank.

8.2 Remedies. Upon the occurrence of any Event of Default, and without prejudice to any right or remedy of the Bank under this Loan Agreement or the Loan Documents or under applicable Law under any other instrument or document delivered in connection herewith, the Bank shall have the following rights:

A. All the rights and remedies at law or equity as may be allowed by law, or pursuant to the provisions of this Agreement, including but not limited to, suit for specific performance of any or all of the covenants contained in this Agreement or in the Note; acceleration of the payment of principal of the Note; or suit at law or equity to enforce or enjoin the action or inaction of parties under the provisions of this Agreement.

B. Declare the Note to be immediately due and payable whereupon the Note shall become forthwith due and payable without presentment, demand, protest or notice of any kind, and the Bank shall be entitled to proceed simultaneously or selectively and successively to enforce its rights under the Note, this Agreement and any of the instruments executed pursuant to the terms hereof, or any one or all of them. Nothing contained herein shall limit the Bank's rights and remedies available under applicable laws.

C. In the event the Bank shall elect to selectively and successively enforce its rights under any of the aforementioned Loan Documents, such action shall not be deemed a waiver or discharge of any other lien, encumbrance or security instrument securing payment of the Note until such time as the Bank shall have been paid in full all of the Indebtedness. The foreclosure of any lien provided pursuant to this Agreement without the simultaneous foreclosure of all such liens shall not merge the liens granted which are not foreclosed with any interest which the Bank might obtain as a result of such selective and successive foreclosure.

D. No delay or omission on the part of the Bank in exercising any power or right hereunder or under the Note, the Loan Documents or under applicable law shall impair such right or power or be construed to be a waiver of any default or any acquiescence therein, nor shall any single or partial exercise by the Bank of any such power or right preclude other or further exercise thereof or the exercise of any other such power or right by the Bank. In the event that all or part of the Indebtedness becomes or is declared to be forthwith due and payable as herein provided, the Bank shall have the right to set off the amount of all the Indebtedness of the Borrowers owing to the Bank against, and shall have, and is hereby granted by the Borrowers, a lien upon and security interest in, all property of the Borrowers in the Bank's possession at or subsequent to such default, regardless of the capacity in which the Bank possesses such property, including but not limited to any balance or share of any deposit, collection or agency account. After Default all proceeds received by the Bank may be applied to the Indebtedness in such order of application and such proportions as the Bank, in its discretion, shall choose. At any time after

the occurrence of any Event of Default, the Bank may, at its option, cause an audit of any and/or all of the books, records and documents of the Borrowers to be made by auditors satisfactory to the Bank at the expense of the Borrowers. The Bank also shall have, and may exercise, each and every right and remedy granted to it for default under the terms of the Security Instruments and the other Loan Documents.

8.3 Deposits; Setoff. Regardless of the adequacy of any other collateral held by the Bank, any deposits or other sums credited by or due from the Bank to Borrowers shall at all times constitute collateral security for the Indebtedness, and may be set off against any Indebtedness in any manner the Bank shall choose and any and all liabilities, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising to the Bank. The rights granted by this Section 8.3 shall be in addition to the rights of the Bank under any statutory banker's lien or the common law right of set-off.

8.4 Application of Payments. During the continuation of any Event of Default, all payments received by the Bank in respect of the Term Note, recoveries upon any portion of the Collateral, or otherwise, may be applied by the Bank to any liabilities, obligations or indebtedness of the Borrowers selected by the Bank in its sole and exclusive discretion.

## ARTICLE IX MISCELLANEOUS

9.1 Notices. Unless otherwise provided herein, all notices, requests, consents and demands shall be in writing and shall be mailed by certified mail, postage prepaid, to the respective addresses specified below, or, as to any party, to such other address as may be designated by it in written notice to the other parties:

If to the Borrowers, to:

The Dixie Group  
TDG Operations, LLC  
475 Reed Rd.  
Dalton, GA 30722

If to the Bank, to:

AmeriState Bank  
P.O. Box 718  
Atoka, Oklahoma 74525-0718

All notices, requests, consents and demands hereunder will be effective when mailed by certified mail, postage prepaid, addressed as aforesaid.

9.2 Governing Law and Jurisdiction. This Agreement and the Note shall be deemed to have been made or incurred under the Laws of the State of Oklahoma and shall be construed and enforced in accordance with and governed by the Laws of Oklahoma.

9.3 No Waiver; Cumulative Remedies. No failure to exercise, and no delay in exercising, on the part of the Bank, any right, power or privilege hereunder or under any other Loan Document or applicable Law shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege of the Bank. The rights and remedies herein provided are cumulative and not exclusive of any other rights or remedies provided by any other instrument or by law. No amendment, modification or waiver of any provision of this Loan Agreement or any other Loan Document shall be effective unless the same shall be in writing and signed by the Bank. No notice to or demand on the Borrowers in any case shall entitle the Borrowers to any other or further notice or demand in similar or other circumstances.

9.4 Place of Payment. All sums payable hereunder shall be paid in immediately available funds to the Bank, at its banking offices at 131 S. Pennsylvania Ave., Atoka, Oklahoma 74525-2431, or at such other place as the Bank shall notify the Borrowers in writing. If any interest, principal or other payment falls due on a date other than a Business Day, then (unless otherwise provided herein) such due date shall be extended to the next succeeding Business Day, and such extension of time will in such case be included in computing interest, if any, in connection with such payment.

9.5 Survival of Agreements. All covenants, agreements, representations and warranties made herein shall survive the execution and the delivery of Loan Documents. All statements contained in any certificate or other instrument delivered by the Borrowers hereunder shall be deemed to constitute representations and warranties by the Borrowers.

9.6 Parties in Interest. All covenants, agreements and obligations contained in this Loan Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that the Borrowers may not assign its rights or obligations hereunder without the prior written consent of the Bank.

**9.7 GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OKLAHOMA, EXCEPT TO THE EXTENT OTHERWISE SPECIFIED IN SUCH LOAN DOCUMENT AND TO THE EXTENT THAT UNITED STATES FEDERAL LAW PERMITS ANY BANK TO CHARGE INTEREST AT THE RATE ALLOWED BY THE LAWS OF THE STATE WHERE THE BANK IS LOCATED.**

**A. All actions or proceedings with respect to this Agreement, THE NOTE or the MORTGAGE, AT THE OPTION OF BANK, SHALL BE INSTITUTED IN EITHER THE DISTRICT COURT OF ATOKA COUNTY, OKLAHOMA, OR ANY JURISDICTION WHERE ANY COLLATERAL MAY BE LOCATED, and by execution and delivery of this Loan Agreement, the BORROWERS irrevocably and unconditionally (i) submits to the non-exclusive jurisdiction (both subject matter and person) of such court, and (ii) waives (A) any objection that the BORROWERS may now or hereafter have to the laying of venue in any of such courts, and (B) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum. THIS SUBMISSION TO JURISDICTION IS NON-EXCLUSIVE AND DOES NOT PRECLUDE THE BANK FROM**

**OBTAINING JURISDICTION OVER THE BORROWERS IN ANY COURT OTHERWISE HAVING JURISDICTION.**

**B. THE BORROWERS HEREBY IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWERS AT ITS SAID ADDRESS, SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE BANK OR ANY HOLDER OF A NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE BORROWERS OR ITS PROPERTIES IN ANY OTHER JURISDICTION.**

9.8 Maximum Interest Rate. Regardless of any provision herein, the Bank shall never be entitled to receive, collect or apply, as interest on the Indebtedness any amount in excess of the maximum rate of interest permitted to be charged by the Bank by applicable Law, and, in the event the Bank shall ever receive, collect or apply, as interest, any such excess, such amount which would be excessive interest shall be applied to other Indebtedness and then to the reduction of principal; and, if the other Indebtedness and principal are paid in full, then any remaining excess shall forthwith be paid to the Borrowers.

9.9 NO ORAL AGREEMENTS. THE LOAN DOCUMENTS EMBODY THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PARTIES AND SUPERSEDE ALL OTHER AGREEMENTS AND UNDERSTANDINGS BETWEEN SUCH PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF, THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

9.10 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Loan Agreement by signing such counterpart. Delivery of an executed counterpart of a signature page to this Loan Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Loan Agreement.

9.11 Exculpation Provisions. Each of the parties hereto specifically agrees that it has a duty to read this Loan Agreement and the Security Instruments and agrees that it is charged with notice and knowledge of the terms of this Loan Agreement and the Security Instruments; that it has in fact read this Loan Agreement and is fully informed and has full notice and knowledge of the terms, conditions and effects of this Loan Agreement; that it has been afforded the option to be represented by independent legal counsel of its choice throughout the negotiations preceding its execution of this Loan Agreement and the Security Instruments; and has received the advice of its attorney in entering into this Loan Agreement and the Security Instruments; and that it recognizes that certain of the terms of this Loan Agreement and the Security Instruments result in one party

assuming the liability inherent in some aspects of the transaction and relieving the other party of its responsibility for such liability. Each party hereto agrees and covenants that it will not contest the validity or enforceability of any exculpatory provision of this Loan Agreement and the Security Instruments on the basis that the party had no notice or knowledge of such provision or that the provision is not "conspicuous."

9.12 Costs. The Borrowers agrees to pay to the Bank all filing fees and expenses incurred or accrued by the Bank in connection with the preparation, execution, delivery and filing of this Loan Agreement, the Security Instruments and the other Loan Documents, or any amendment, waiver, consent or modification thereto or thereof, or any enforcement thereof. The Borrowers further agrees that such foregoing fees and expenses shall be paid regardless of whether or not the transactions provided for in this Loan Agreement are eventually closed and whether or not any sums are advanced to the Borrowers by the Bank.

9.13 Severability. The unenforceability or invalidity as determined by a Tribunal of competent jurisdiction, of any provision or provisions of this Loan Agreement shall not render unenforceable or invalid any other provision or provisions hereof.

9.14 Exceptions to Covenants. The Borrowers shall not be deemed to be permitted to take any action or fail to take any action which is permitted as an exception to any of the covenants contained herein or which is within the permissible limits of any of the covenants contained herein if such action or omission would result in the breach of any other covenant contained herein.

9.15 WAIVER OF JURY; CERTIFICATIONS. BORROWERS AND BANK FULLY, VOLUNTARILY, IRREVOCABLY, UNCONDITIONALLY AND EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED (OR WHICH MAY IN THE FUTURE BE DELIVERED) IN CONNECTION HERewith OR ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, THE NOTES AND/OR THE SECURITY INSTRUMENTS. BORROWERS AND BANK AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE BORROWERS (I) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (II) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE, THE BANK OR COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (III) ACKNOWLEDGES THAT IT AND THE BANK HAVE BEEN INDUCED TO ENTER INTO THIS CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION.

9.16 USA PATRIOT Act Notice. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for the Borrowers: When a Borrowers opens an account, the Bank will ask for the Borrowers' name, residential address, tax identification number, and other information that will allow the Bank to identify the Borrowers, including the Borrowers' date of birth if the Borrowers are an individual. The Bank may also ask, if the Borrowers are an individual, to see the Borrowers' driver's license or other identifying documents, and, if the Borrowers is not an individual, to see the Borrowers' legal organizational documents or other identifying documents. The Bank will verify and record the information the Bank obtains from the Borrowers pursuant to the USA PATRIOT Act, and will maintain and retain that record in accordance with the regulations promulgated under the USA PATRIOT Act.

9.17 Not a Reportable Transaction. The parties signatory hereto acknowledge and stipulate and the Borrowers represents to the Bank that the transactions contemplated by this Loan Agreement do not constitute a "Reportable Event" as that term is described and defined in regulations of the Treasury Department of the United States.

9.18 Indemnification. Borrowers agrees to indemnify and hold harmless the Bank and its respective officers, employees, agents, attorneys and representatives (singularly, an "Indemnified Party", and collectively, the "Indemnified Parties") from and against any loss, cost, liability, damage or expense (including the reasonable fees and out-of-pocket expenses of counsel to the Bank, including all local counsel hired by such counsel) ("Claim") incurred by the Bank in investigating or preparing for, defending against, or providing evidence, producing documents or taking any other action in respect of any commenced or threatened litigation, administrative proceeding or investigation under any federal securities law, federal or state environmental law, or any other statute of any jurisdiction, or any regulation, or at common law or otherwise, which is alleged to arise out of or is based upon any acts, practices or omissions or alleged acts, practices or omissions of the Borrowers or their agents or arises in connection with the duties, obligations or performance of the Indemnified Parties in negotiating, preparing, executing, accepting, keeping, completing, countersigning, issuing, selling, delivering, releasing, assigning, handling, certifying, processing or receiving or taking any other action with respect to the Loan Documents and all documents, items and materials contemplated thereby unless such claim arises out of an Indemnified Party's gross negligence or willful misconduct. The indemnity set forth herein shall be in addition to any other obligations or liabilities of the Borrowers to the Bank hereunder or at common law or otherwise, and shall survive any termination of this Agreement, the expiration of the Loans and the payment of all indebtedness of the Borrowers to the Bank hereunder and under the Term Note, provided that the Borrowers shall have no obligation under this Section to the Bank with respect to any of the foregoing arising out of the gross negligence or willful misconduct of the Bank. If any Claim is asserted against any Indemnified Party, the Indemnified Party shall endeavor to notify the Borrowers of such Claim (but failure to do so shall not affect the indemnification herein made except to the extent of the actual harm caused by such failure). The Indemnified Party shall have the right to employ, at the Borrowers' expense, counsel of the Indemnified Parties'

choosing and to control the defense of the Claim. The Borrowers may at their expense also participate in the defense of any Claim. Each Indemnified Party may employ separate counsel in connection with any Claim to the extent such Indemnified Party believes it reasonably prudent to protect such Indemnified Party. The parties intend for the provisions of this Section to apply to and protect each Indemnified Party from the consequences of any liability including strict liability imposed or threatened to be imposed on Bank as well as from the consequences of its own negligence, whether or not that negligence is the sole, contributing, or concurring cause of any Claim. It is not the intent of this Section to excuse any breach by the Bank of this Agreement.

9.19 Third-Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective assigns, any rights or remedies under or by reason of this Agreement, and no third party shall have any right to compel or effect any advance, disbursement, or other benefit described herein.

9.20 Selective Enforcement. In the event either party elects selectively and successively to enforce its rights under any one or more of the instruments securing payment of the Term Note, or the Loan Documents, such action will not be deemed a waiver or discharge of any other lien or encumbrance securing payment of the Term Note until such time as the Bank shall have been paid in full all sums advanced by the Bank.

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IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed and delivered effective as of the day and year first above written.

The Dixie Group, Inc.

By: \_\_\_\_\_  
Jon Faulkner  
Vice President

TDG Operations, LLC

By: \_\_\_\_\_  
Jon Faulkner  
Vice President and Manager

"Borrowers"

AmeriState Bank, a state banking corporation

By \_\_\_\_\_

Joe Geisler, Vice President

"Bank"



**EXHIBITS**

Exhibit A -Mortgaged Premises (Escambia County -- Legal Description)

Exhibit B - Mortgaged Premises (Randolph County -- Legal Description)

Exhibit C -Compliance Certificate (Borrowers)

Prepared By: Scott Meacham  
 Crowe & Dunlevy  
 324 N. Robinson Ave, Ste. 100  
 Oklahoma City, OK 73102

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**REAL ESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING**

**(with Power of Sale)**

THIS REAL ESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (hereinafter called the "Mortgage") is made effective as of the 26th day of October, 2020, by and among TDG Operations, LLC, a Georgia limited liability company, having an address of 475 Reed Rd., Dalton, Georgia 30722, as mortgagor (the "Mortgagor"), and AmeriState Bank, an Oklahoma state banking corporation, having an address of 113 S. Pennsylvania St., Atoka, Oklahoma 74525, as mortgagee ("Mortgagee").

WHEREAS, Mortgagor and its affiliate through common ownership and control, The Dixie Group, Inc., a Tennessee corporation ("Co-Borrower"), have applied to Mortgagee for and Mortgagee has agreed to the extension of a \$10,000,000.00 term loan until October 26, 2045, evidenced by that certain \$10,000,000.00 Term Note dated as of October 26, 2020, as extended from time to time via amendment or otherwise, such promissory note from Mortgagor and Co-Borrower being payable to the order of the Mortgagee, accruing interest at the variable annual rate therein stated (such \$10,000,000.00 Term Note, as hereafter amended, extended, renewed, rearranged, substituted for, replaced, changed in form, consolidated or otherwise modified from time to time, being referred to herein as the "Note").

NOW, THEREFORE, to secure to Mortgagee the payment of the aforesaid mortgage indebtedness and the indebtedness and obligations hereafter described, Mortgagor does hereby grant, bargain, sell, convey, mortgage and grant a security interest unto Mortgagee and its successors and assigns, with power of sale, all of its right, title and interest in and to the real property located in Escambia County, Alabama, described in Exhibit A annexed hereto together with all and singular the tenements, hereditaments and appurtenances thereof; all buildings and improvements now or hereafter constructed thereon including (without limitation) all fixtures, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to the aforesaid property, and all buildings or improvements (all of which property is herein called the "Collateral"), and all proceeds and products thereof. The above-described real property, appurtenances, buildings, improvements and Collateral are hereinafter collectively called the "Mortgaged Premises" and are hereby declared to be subject to the lien of this Mortgage as continuing and continuous, first and prior mortgage lien and security interest, for the payment of the following described indebtedness and obligations:

- A. All indebtedness evidenced by the Note and all renewals, extensions, substitutions, replacements, changes in form, modifications, substitutions and rearrangements of the Note and of the indebtedness evidenced thereby.
- B. The performance by Mortgagor of each covenant, agreement and obligation of Mortgagor under this Mortgage and each covenant, agreement and obligation of Mortgagor under the Note and other loan documents or security instruments, including mortgages between or among the Mortgagor and the Mortgagee, as lender (collectively, the "Loan Documents").
- C. Any sums which may be advanced or paid by Mortgagee under the terms of this Mortgage on account of the default or failure of Mortgagor to comply with the covenants herein.
- D. The payment by Mortgagor and Co-Borrower to Mortgagee of any and all amounts reasonably expended by Mortgagee in exercising or attempting to exercise any right or remedy granted or otherwise available to Mortgagee upon the occurrence of an Event of Default under the Loan Documents.
- E. The payment by Mortgagor and Co-Borrower to Mortgagee of interest on all amounts expended by Mortgagee for any purpose specified in Paragraphs C and D above at the interest rate provided in the Note on the amount of each expenditure from the date thereof.
- F. All loans and advances which Mortgagee may hereafter make to Mortgagor or Co-Borrower and all other and additional debts, obligations and liabilities of every kind and character of Mortgagor now or hereafter arising in favor of Mortgagee, regardless of whether such debts, liabilities or obligations be direct or indirect, primary or secondary, joint, several, fixed or contingent, and irrespective of the manner in which the same may be incurred.

TO HAVE AND TO HOLD the Mortgaged Premises with all the rights, improvements and appurtenances thereunto belonging, or appertaining unto Mortgagee, its successors and assigns, forever. Mortgagor covenants that Mortgagor is well and lawfully seized of a good and indefeasible fee simple estate in the Mortgaged Premises, that Mortgagor is the lawful owner of and has a good and lawful right and title to sell, convey and mortgage and encumber the same, that the Mortgaged Premises are free and clear of all general and special taxes, liens, charges, assessments and encumbrances of every kind and character and that Mortgagor hereby warrants and will forever defend the title thereto against the claims or demands of all persons.

1. Payment of Indebtedness. If Mortgagor and Co-Borrower shall pay the indebtedness herein described, including (without limitation) the Note, and shall in all things do and timely perform all other acts and agreements herein contained to be done,



then, and in that event only, the Mortgagee shall cause a full satisfaction thereof to be filed for record in the real property records of the county in which this Mortgage is recorded.

2. Maintenance; Waste. With respect to the Mortgaged Premises, Mortgagor covenants and agrees: (a) to keep the same in good condition and repair; (b) to pay all general and special taxes and assessments and other charges that may be levied or assessed upon or against the same as they become due and payable and to furnish to Mortgagee receipts showing payment of any such taxes and assessments, if demanded; (c) to pay all debts for repair or improvements now existing or hereafter arising which may become liens upon or charges against the Mortgaged Premises; (d) to comply with or cause to be complied with all material requirements of any governmental authority relating to the Mortgaged Premises; (e) pursuant to the terms and conditions of Paragraph 3 below, to promptly repair, restore, replace or rebuild any part of the Mortgaged Premises which may be damaged or destroyed by any casualty whatsoever; and (f) to promptly notify Mortgagee of any damage to the Mortgaged Premises in excess of Fifty Thousand Dollars (\$50,000.00). Mortgagor further covenants and agrees that Mortgagor will not: (a) commit or suffer to be committed any waste of or on the Mortgaged Premises; (b) initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting, restricting or defining the uses which may be made of the Mortgaged Premises or any part thereof without the prior written consent of the Mortgagee; or (c) permit any lien or encumbrance of any kind or character to accrue or remain on the Mortgaged Premises or any part thereof other than the lien of this Mortgage.

3. Insurance. Mortgagor will keep or cause the tenant thereof to keep the Mortgaged Premises insured for the benefit of Mortgagee against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, marine, smoke, vandalism and malicious mischief, all in amounts as set forth in the Loan Documents), and shall provide Mortgagee with evidence of liability insurance in amounts as set forth in the Loan Documents) and, if applicable, flood insurance in an amount equal to the maximum amount of coverage made available with respect to the Mortgaged Premises under the National Flood Insurance Program (or evidence satisfactory to Mortgagee that the Mortgaged Premises are not located in an area designated by the Secretary of Housing and Urban Development as an area having special flood or mudslide hazards and that flood insurance is not required for this mortgage loan under the terms of any law, regulation or rule governing Mortgagee's activities), and when and to the extent reasonably required by Mortgagee, against any other risk insured against by persons operating like properties in the locality of the Mortgaged Premises; all insurance herein provided for shall be in form and with insurance companies reasonably approved by Mortgagee; regardless of the types or amounts of insurance reasonably required by the Loan Documents and approved by Mortgagee, Mortgagor will assign and deliver to Mortgagee all certificates and copies of policies of insurance which insure against any loss or damage to the Mortgaged Premises as collateral and further security for the payment of the indebtedness secured by this Mortgage, with Mortgagee named as first mortgagee, loss payee or an additional insured, whichever is appropriate as determined by Mortgagee pursuant to a mortgage clause endorsement acceptable to Mortgagee, on each such certificate and policy of insurance.

If Mortgagee by reason of such insurance receives any money for loss or damage, such amount shall, subject to the following proviso, be held by Mortgagee and paid to Mortgagor for the repair or restoration of the Mortgaged Premises, provided that Mortgagor shall not be in default hereunder. If Mortgagor shall have delivered to Mortgagee within sixty (60) days after such casualty: (a) evidence reasonably satisfactory to Mortgagee that any sale contract or long term loan commitment held by Mortgagor for the Mortgaged Premises will not be materially adversely affected by the casualty or the delay caused thereby in completion of or repairs in the Mortgaged Premises, (b) plans and specifications, in form and substance reasonably satisfactory to Mortgagee, for any such rebuilding or restoration, (c) a budget for rebuilding or restoration reasonably satisfactory to Mortgagee, and (d) evidence reasonably satisfactory to Mortgagee that Mortgagor has or will have upon receipt of insurance proceeds, all amounts necessary to pay the cost of such rebuilding or restoration.

Mortgagee may retain and apply the insurance proceeds toward payment of the indebtedness and obligations secured by this Mortgage. Mortgagee shall not be obligated to see to the proper application of any amount paid over to Mortgagor. Not less than twenty (20) days prior to the expiration dates of each certificate or policy required of Mortgagor pursuant to this Paragraph, Mortgagor will deliver to Mortgagee a renewal certificate and copy of the policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee. In the event of a foreclosure of this Mortgage, the purchaser of the Mortgaged Premises shall succeed to all the rights of Mortgagor, including any right to unearned premiums, in and to all certificates and policies of insurance assigned and delivered to Mortgagee pursuant to the provisions of this Paragraph.

Mortgagor specifically covenants and agrees that in the event Mortgagor has provided Mortgagee with evidence reasonably satisfactory to Mortgagee that flood insurance covering the Mortgaged Premises should not be required at the time of execution of this Mortgage and the Mortgaged Premises should thereafter become eligible for flood insurance under the National Flood Insurance Program, or under any subsequent Act of Congress of the United States, and should the Mortgaged Premises be located in an area now or thereafter designated by the Secretary of Housing and Urban Development as an area having special flood or mudslide hazards, Mortgagor and Mortgagor's successors in title shall maintain at its or their sole cost and expense flood insurance available under the National Flood Insurance Program, in such amounts and in such form as may be required by Mortgagee.

4. Alterations. No building or other property now or hereafter subject to the lien of this Mortgage shall be removed, demolished or materially altered, without the prior written consent of Mortgagee, except that Mortgagor shall have the right, without such written prior consent, to remove and dispose of, free from the lien of this Mortgage, such Collateral as from time to time may become worn or obsolete, provided that either: (a) simultaneously with or prior to such removal, any such Collateral shall be replaced with other Collateral of a value at least equal to that of the replaced Collateral and free from any title retention device, security agreement or other encumbrance, and by such removal or replacement, Mortgagor shall be deemed to have subjected such Collateral to the lien of this Mortgage; or (b) any net cash proceeds received from such disposition shall be paid over promptly to Mortgagee to be applied to the indebtedness hereby secured.

5. Default; Remedies. Upon the failure of Mortgagor to pay or cause the applicable tenant thereof to pay any of the taxes, assessments, debts, liens or other charges as the same become due and payable, or to insure the Mortgaged Premises or deliver the certificates of insurance and copies of the policies of insurance as herein provided, or to perform Mortgagor's covenants and agreements herein, Mortgagee is hereby authorized, at its option, to insure the Mortgaged Premises, or any part thereof, and pay the costs of such insurance, and to pay such taxes, assessments, debts, liens or other charges herein described, or any part thereof, and to remedy Mortgagor's failure to perform hereunder and pay the costs associated therewith, and Mortgagor hereby agrees to refund on demand all sum or sums so paid, with interest thereon at the interest rate specified in the Note; and any such sum or sums so paid



together with interest thereon shall become a part of the indebtedness hereby secured; provided, however, that the retention of a lien hereunder for any sum so paid shall not be a waiver of subrogation or substitution which Mortgagee might otherwise have.

In the event of the failure of Mortgagor within any applicable curative or grace period following any applicable written notice required from Mortgagee, if any, to pay any of the taxes, assessments, debts, liens or other charges herein described as the same become due and payable (subject to Mortgagor's right to protest the same pursuant to the terms, provisions and limitations of the Loan Documents) or to keep the Mortgaged Premises insured in the manner and time herein provided, or the failure to deliver renewal policies in the manner and time herein provided, or if any installment of principal or interest is not paid at or within the time required by the terms of the Note, or in the case of the failure of the Mortgagor to comply with the terms, provisions and conditions of paragraph 4 hereof in the event of actual destruction, demolition, removal, condemnation or taking of all or any major part of the Mortgaged Premises, or the failure to timely comply with the covenants and warranties of or to timely do any of the things herein agreed to be done within thirty (30) days following written notice from Mortgagee (except for payment obligations under the Note for which the requisite written notice therein prescribed (including the limitations of the frequency thereof) and a fifteen (15) day curative period is established) or on the foreclosure of or default under any other mortgage or deed of trust encumbering the Mortgaged Premises or any note instrument secured thereby, provided, that the foregoing shall not be deemed to constitute Mortgagee's consent to any other mortgage, or on the breach of any of the terms, provisions, covenants or warranties of the Note, the Loan Documents or this Mortgage or any other instrument securing or evidencing the indebtedness hereby secured, then, in any of such events, all of such indebtedness secured hereby, including the outstanding loan evidenced by the Note and all other obligations, without deduction, at the option of Mortgagee, without further or other notice, shall become immediately due and payable, and Mortgagee shall be empowered and entitled, at its option, to foreclose this Mortgage and shall be entitled to the possession of the Mortgaged Premises and the rents, lease payments, security deposits and profits and proceeds thereof, and shall be entitled to have a receiver appointed to take possession of the Mortgaged Premises.

At the option of the Mortgagee, this Mortgage may be foreclosed by judicial proceedings, or by non-judicial foreclosure sale in accordance with applicable laws, and to sell and dispose of the Mortgaged Premises and all the right, title, and interest of Mortgagor therein, by sale at any place authorized by law as may be specified in the notice of such sale to the highest bidder. If this Mortgage is foreclosed by non-judicial foreclosure sale pursuant to the power of sale, Mortgagee shall give notice of the foreclosure by publication once a week for 3 successive weeks. Such notice shall state the time, place and terms of each such sale by publication in some newspaper published in the county or counties in which the Mortgaged Premises are to be sold, or a substantial and material part thereof, is located. At such foreclosure sale, Mortgagee may sell the Mortgaged Premises (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of the courthouse door of such county, at public outcry, to the highest bidder for cash. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Mortgaged Premises may be sold as a whole or in separate parts, parcels, or tracts, including separate parts, parcels or tracts located in the same county, and in such manner and order as the Mortgagee in its sole discretion may elect. The exercise of the power of sale with respect to a separate part, parcel, or tract of the Mortgaged Premises in one county does not extinguish or otherwise affect the right to exercise the power of sale with respect to the other parts, parcels, or tracts of the Mortgaged Premises in that or another county to satisfy the obligation secured by the Mortgage, and the right and power of sale arising out of any Event of Default shall not be exhausted by one or more sales of the Mortgaged Property. At the foreclosure, Mortgagee shall be entitled to bid and to purchase the Mortgaged Premises and shall be entitled to apply the indebtedness secured by the Mortgage, or any portion thereof, in payment for the Mortgaged Premises. The Mortgagee shall be authorized to retain an attorney to represent it in such proceedings. Upon such sale, Mortgagee or the attorney conducting said sale are hereby authorized and empowered to make due conveyance to the purchaser or purchasers in the name of Mortgagor. The Mortgagor hereby irrevocably appoints Mortgagee to be the attorney in fact of the Mortgagor and in the name and on behalf of the Mortgagor to execute and deliver any deeds, transfers, conveyances, assignments, assurances, and notices which the Mortgagor ought to execute and deliver and do and perform any and all such acts and things which Mortgagor ought to do and perform under the covenants herein contained and generally to use the name of Mortgagor in the exercise of all or any of the powers hereby conferred on Mortgagee. Upon any sale, whether under the power of sale hereby given or otherwise, it shall not be necessary for Mortgagee or any public officer acting under execution or order of court to have physically present or constructively in its possession any of the Mortgaged Premises. In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the indebtedness secured by the mortgage, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest. The remedies provided to Mortgagee in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage, the Note, the Loan Agreement or any other Loan Document, by law or in equity, all of which rights and remedies may be exercised by Mortgagee independently, simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised.

6. Receivership. In the event Mortgagee elects to seek the appointment of a receiver following Mortgagor's non-performance, breach, default or violation of any condition, covenant or other agreement in this Mortgage or the note secured hereby, Mortgagee shall be entitled to appointment of a receiver without the necessity of establishing that the property is probably insufficient to discharge the mortgage debt, the express purpose and intent of this clause being hereby acknowledged by Mortgagor to provide for Mortgagor's express consent to the appointment of a receiver upon the occurrence of any breach, default, violation or other non-performance under this Mortgage by Mortgagor.

7. Taxes; Expenses. Mortgagor will pay, before same become delinquent or any penalty attaches thereto for nonpayment, any and all taxes, assessments and charges, general or special, of every nature and to whomsoever assessed, that may be now or hereafter levied or assessed under any law now existing or hereafter enacted, directly or indirectly upon the Mortgaged Premises or any part thereof, upon the rents, issues, income or profits thereof or upon the indebtedness secured hereby. Mortgagor will not suffer or permit any liens, security interests, levies, attachments or other encumbrances to become effective, or to be asserted, against any of the Mortgaged Premises, and will regularly and promptly submit to Mortgagee such evidence of the due and punctual payment of such taxes, assessments or charges as Mortgagee may require. The foregoing notwithstanding, Mortgagor may in good faith contest, by a proper legal proceeding, the validity or amount of any such taxes, assessments or charges, provided Mortgagor deposits with Mortgagee as security for payment of such contested taxes, assessments or charges an amount equal thereto, and further provided that Mortgagor will pay such contested item and all costs and penalties, if any, at least thirty (30) days before the date the Mortgaged Premises may be sold by the taxing authorities because of nonpayment of said taxes, assessments or charges.

Upon violation of the foregoing undertaking in any part, or upon the passage by the State of Florida of any law imposing payment of the whole or any part of the aforesaid taxes or assessments upon Mortgagee, or deducting from the value of the Mortgaged Premises for the purpose of taxation any liens thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes so as to materially adversely affect this Mortgage, or upon the rendering by any court of competent jurisdiction of a decision holding that any undertaking by Mortgagor to pay such taxes or assessments, or any of them, or any similar undertaking, is in whole or in part legally inoperative or void, then in such event, unless the applicable law permits Mortgagor to pay the same and Mortgagor in fact promptly pays all such taxes, the indebtedness secured hereby will, at the option of Mortgagee, without notice to any party, become immediately mature, due and payable. Mortgagor also agrees to pay any and all taxes which may be levied or assessed directly or indirectly upon the Note (except only any federal and state income taxes on the Note), this Mortgage and the indebtedness hereby secured, and further agrees to pay all reasonable expenses incurred in connection with the creation of the indebtedness hereby secured, including, without limitation, attorney's fees, title insurance fees, survey expenses and recording costs, without regard to any law which may be hereafter enacted imposing payment of the whole or any part thereof upon Mortgagee; and, upon violation of the foregoing agreement to pay such taxes and assessments, or if the rate of said taxes and expenses added to the respective rates of interest provided for in the Note shall exceed the then maximum legal rate of interest, then, and in any such event, the indebtedness hereby secured, without deduction, shall, at the option of Mortgagee become immediately due and payable, anything contained in this Mortgage or in the Note notwithstanding. The additional amounts which may become due and payable hereunder shall be regarded as part of the indebtedness secured by this Mortgage. This paragraph shall also apply to the amount to be paid under the present Florida mortgage registration tax laws, all of which amount the Mortgagor agrees to pay.

8. **Tax and Insurance Accounts.** For so long as ad valorem real estate taxes, special assessments and hazard and casualty insurance premiums are being timely paid and Mortgagor provides Mortgagee with evidence of such payment and no other condition or event exists or has occurred or failed to occur which but for the passage of time or the giving of notice or both would constitute an Event of Default under the Loan Documents and no such Event of Default exists, Mortgagee will waive the monthly escrow of such taxes, any special assessments and such insurance premiums, thereby permitting Mortgagor to forego such monthly escrow deposits. Such monthly tax and insurance deposits shall be held by Mortgagee and shall not bear or accrue interest, shall not be trust funds and upon default all such funds may be applied by Mortgagee on account of the Note and the other obligations secured hereby. Failure of Mortgagor so to make such monthly deposits or any deficiency in the amount thereof, unless made good or cured by Mortgagor prior to the next succeeding monthly installment due date, shall constitute an event of default hereunder. It shall be the responsibility of Mortgagor to furnish Mortgagee with tax bills or statements in sufficient time to timely pay the taxes and assessments before any penalty attaches or interest charges accrue thereon and the insurance premiums before any of the policies lapse.

9. **Expenses of Collection.** It is agreed that if, and as often as, this Mortgage or the Note are placed in the hands of an attorney for collection or for representation of Mortgagee in any bankruptcy, insolvency, probate or other judicial proceeding, or this Mortgage is referred to an attorney for collection or foreclosure, or to protect the priority or validity of this Mortgage, or to prosecute or defend any suit affecting the Mortgaged Premises, or to enforce or defend any of Mortgagee's rights hereunder, Mortgagor shall pay to Mortgagee its reasonable attorneys' fees, together with all court costs, expenses for abstracting or title examination, title insurance or other disbursements, costs or expenses relating to the Mortgaged Premises, all of which sums, together with interest thereon, shall be secured hereby.

10. **Appraisal.** In case of judicial foreclosure hereof and sale hereunder, appraisal of the Mortgaged Premises is hereby expressly waived, or not waived, at the sole option of Mortgagee, such option to be exercised thereby at the time judgment is entered in such foreclosure, or at any time prior thereto.

11. **Sale in Parcels.** In case of any sale under this Mortgage by virtue of judicial proceedings or otherwise, the Mortgaged Premises may be sold in one or more parcels and as an entirety.

12. **Condemnation Awards.** Mortgagor covenants and agrees that if at any time all or any portion of the Mortgaged Premises shall be taken or damaged under the power of eminent domain, the award received by condemnation proceedings for any property so taken or any payment received in lieu of such condemnation proceedings shall be paid directly to Mortgagee and, subject to compliance with the next succeeding sentence of this Paragraph 12, applied as a principal prepayment on the Note in such order as Mortgagee shall determine in its sole discretion. Subject to the same terms and conditions for payment of insurance proceeds to Mortgagor as set forth in Paragraph 3 above, such award or payment from condemnation proceedings shall be paid to Mortgagor for the purpose of altering, restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as a result of any such taking or damage; provided, that Mortgagee shall not be obligated to see to the application of any amount paid over to Mortgagor. If the terms for payment of such award to Mortgagor are not met, then Mortgagee may retain and apply the award toward payment of the indebtedness secured by this Mortgage. Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings or negotiations for the condemnation of the Mortgaged Premises, or any portion thereof, will notify Mortgagee in writing of the pendency of such negotiations or proceedings. Mortgagee may participate in any such negotiations or proceedings, and Mortgagor from time to time will execute and deliver to Mortgagee all instruments requested by Mortgagee to permit such participation.

13. **Certificate.** Mortgagor, upon written request of Mortgagee, made either personally or by mail, shall certify, by a writing duly acknowledged, to Mortgagee or to any proposed assignee of this Mortgage, the amount of principal and interest then secured by this Mortgage and whether Mortgagor has knowledge of any offsets or defenses against the indebtedness hereby secured, within ten (10) days after such request by Mortgagee.

14. **Notice.** Unless expressly provided to the contrary therein, every provision for notice, demand, consent or request shall be deemed fulfilled only upon compliance with the notice provisions more particularly described in Paragraph 25 hereof.

15. **Renewals/Extensions/Future Advances.** This Mortgage shall secure the payment of the indebtedness evidenced by the Note and any and all additional or other future loans or advances to Mortgagor by the holder hereof in connection with the Mortgaged Premises or any improvements now or hereafter located thereon, together with any renewals, extensions, replacements, modifications, rearrangements, consolidations, substitutions or extensions of the Note.

16. Inspection. Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Mortgaged Premises at all reasonable times upon reasonable prior notice to Mortgagor.

17. Indulgences, Extensions, No Waiver. No failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions hereof shall be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Neither Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the indebtedness now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Premises and Mortgagee extending, from time to time, the time of payment or modifying the terms of the Note or this Mortgage if the consent of Mortgagor has been obtained in connection with such modification to the extent Mortgagor remains liable on the Note, and in the latter event, Mortgagor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Premises, Mortgagee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for such indebtedness and may from time to time extend the time of payment or otherwise modify the terms of the Note and/or this Mortgage without, as to the security for the remainder thereof, in any way impairing or affecting the lien of this Mortgage or the priority of such lien, as security for the payment of the indebtedness as it may be so extended or modified, over any subordinate lien. Mortgagee may resort for the payment of indebtedness hereby secured to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

18. Prohibited Acts. Mortgagor will not, without the express prior written approval of Mortgagee: (a) sell, convey, mortgage, pledge or otherwise transfer or encumber all or any part of the Mortgaged Premises or any interest therein (such prohibition on encumbrance is deemed not to include mechanics' or materialmen's liens for which Mortgagor has provided indemnification, bonding or other action sufficient to prevent enforcement of such lien satisfactory to Mortgagee within thirty (30) days after the inception of such lien); or (b) create or suffer to exist any security interest, chattel mortgage or title retention device covering all or any part of the Collateral; or (c) permit any sale, conveyance, assignment, transfer, pledge, creation of any security interest, or other disposal of an encumbrance of, whether by operation of law or otherwise, any ownership interest in Mortgagor (except for any such transfer by operation of law by virtue of the death of a member owner to the surviving spouse or another existing member of Mortgagor and prompt written notice thereof to the Mortgagee). The occurrence of any of the aforesaid events, whether by operation of law or otherwise, without Mortgagee's prior written approval, shall, subject only to any applicable notice and curative provisions hereof, at Mortgagee's option, constitute an event of default hereunder, and Mortgagee may declare the indebtedness hereby secured immediately due and payable and exercise any or all of Mortgagee's rights herein provided without other or further notice. This provision shall apply to each and every sale, agreement to sell, conveyance, mortgage, transfer or encumbrance, regardless of whether or not Mortgagee has consented to or waived its rights hereunder, whether by action or inaction, in connection with any previous sale, conveyance, mortgage, transfer or encumbrance, whether one or more.

19. Cumulative Remedies. The rights of Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the other. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

20. Financial Reports. With respect to the Mortgaged Premises and Mortgagor's operation thereof, Mortgagor agrees to keep proper books of record and account in accordance with generally accepted accounting principles consistently applied. Mortgagee shall have the right to examine the books of record and accounts of Mortgagor and to discuss the business affairs, finances and accounts of Mortgagor and to be informed as to the same by Mortgagor, all at such reasonable times and intervals as Mortgagee may request. Mortgagor shall submit to Mortgagee annual financial statements, all to be delivered to and held by the Mortgagee on a confidential basis.

21. Security Interest. This Mortgage shall also be considered to be and shall be construed as a security agreement and a fixture filing with respect to any and all of the items and types of the Collateral herein described or referenced which may be subject to a security interest as a fixture pursuant to the Alabama Uniform Commercial Code, and Mortgagor hereby grants and pledges to Mortgagee a first and prior continuing security interest in and to Collateral, including the fixtures attached to and used exclusively in the operation and maintenance of the Mortgaged Premises (including all proceeds and products thereof), whether now owned or hereafter acquired but excluding personal property or fixtures used in the manufacturing business conducted on the Mortgaged Premises. Mortgagee shall be entitled to exercise any and all rights that it may have hereunder, under the Alabama Uniform Commercial Code with respect to the Collateral.

A. Additional Documents. Mortgagor will from time to time, within ten (10) days after request by Mortgagee, execute, acknowledge and deliver any fixture filing, continuation statement, or other similar documents that Mortgagee may reasonably request in order to protect, preserve, continue, perfect, extend or maintain the security interest under and the priority of this Mortgage and will, upon demand, pay any expenses and fees incurred by Mortgagee in the preparation, execution and filing of any such documents.

B. Fixture Filing. This Mortgage shall be filed of record in the real property records of Escambia County, Alabama and the real estate records of each county where any part of the Mortgaged Premises is located as a fixture filing and covers all of the items and types of Collateral constituting or to constitute fixtures as defined in the Alabama Uniform Commercial Code, and this Mortgage shall constitute a "fixture filing" as set forth in the Alabama Uniform Commercial Code.

22. Bankruptcy. The entire indebtedness secured by this Mortgage shall become immediately due and payable at the option of Mortgagee if by order of a court of competent jurisdiction, a receiver or liquidator or trustee of Mortgagor (as defined in the





Loan Documents), or of all or any part of the Mortgaged Premises, shall be appointed and shall not have been discharged within thirty (30) days; or, if by decree of any such court, Mortgagor shall be insolvent or the Mortgaged Premises shall have been sequestered and such decree shall have continued undischarged and unstayed for thirty (30) days after the entry thereof; or if Mortgagor shall file or have filed against it a proceeding seeking relief under any provision or chapter of any bankruptcy or insolvency law or shall consent to the filing of any bankruptcy petition against Mortgagor under any such law; or Mortgagor shall file a petition or answer seeking reorganization, rehabilitation or an arrangement with creditors; or if (without limitation of the generality of the foregoing) Mortgagor shall make an assignment for the benefit of creditors, become insolvent or shall admit in writing an inability to pay debts generally as they become due, or shall consent to the appointment of a receiver, trustee or liquidator of Mortgagor, or of all or any part of the Mortgaged Premises.

23. Leases/Assignment of Rents and Profits. With respect to any and all applicable subsisting and future leases or rentals (collectively the "Leases") affecting the Mortgaged Premises, Mortgagor represents and agrees as follows to the fullest extent permitted by applicable law and regulation pertaining to the Mortgaged Premises and the tenants/residents thereof: (a) to perform faithfully Mortgagor's covenants under the Leases and neither do nor neglect to do, nor permit to be done, anything (other than pursuing the enforcement of the terms of such leases in the exercise of remedies thereunder, i.e., forcible entry and detainer, eviction, etc.) which might cause the modification or termination of any of the Leases (or of the obligations of any lessee or tenant or any person claiming through such lessee or tenant, respectively), or which might diminish or impair the value of any of the Leases or the rents provided for therein (or the interest of Mortgagor or Mortgagee therein or thereunder); (b) to permit no assignment of any of the Leases or any subletting thereunder and not to anticipate for more than one (1) month in advance of any rents (except only for prepayments by corporate lessees upon notice thereof from Mortgagor to Mortgagee) that may become collectible under any of the Leases; (c) except for this Mortgage and any other mortgage expressly permitted by the terms hereof, not to execute a mortgage or create or permit a lien affecting the Mortgaged Premises; (d) to execute and/or deliver to Mortgagee, within ten (10) days after request therefor, such rent rolls, collateral assignments, estoppel certificates (reciting, among other things, that all outstanding Leases are effective and binding), and other instruments as might be reasonably required by Mortgagee with respect to any Lease now or hereafter affecting the Mortgaged Premises; and (e) that all representations made by Mortgagor to Mortgagee in connection with the Leases are and will be true and correct.

Mortgagor hereby mortgages, pledges and collaterally grants and assigns to Mortgagee as additional security for the Note and the other obligations all of such Leases now existing or hereafter made of all or any part of the Mortgaged Premises together with all rents, lease payments, other profits and security deposits due or held or hereafter to become due or held in connection therewith. This assignment is intended to grant unto Mortgagee all rights, powers, remedies and privileges afforded to a mortgagee under 46 O. S. Section 4(A), as amended, and no additional duties or obligations (fiduciary or otherwise) except those expressly required of or imposed on mortgagees by the aforesaid statutory provision as a result of this or any other such collateral assignment pertaining to all or any portion of the Mortgaged Premises or exercise or attempted exercise of its rights hereunder or any other such collateral assignment executed by Mortgagor in connection with the Mortgaged Premises or any portion thereof.

24. Subrogation. To the extent funds are advanced under the Note hereby secured for the purpose of paying any indebtedness secured by any mortgage lien having priority over the lien of this Mortgage, Mortgagee shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by the holder of such prior mortgage. Except with respect to the priority of any mortgage to which Mortgagee is subrogated pursuant to the provisions hereof, the terms and provisions of this Mortgage shall govern the rights and remedies of Mortgagee and shall supersede the rights and remedies provided under any mortgage to which Mortgagee is subrogated.

25. Notices. All notices required hereunder or pursuant to the Loan Documents, the Note or any other collateral or security documents therein defined or described shall be mailed or delivered in accordance with and subject to the terms and provisions of Section 6.1 of the Loan Documents:

Mortgagor:

TDG Operations, LLC  
475 Reed Rd.  
Dalton, Georgia 30722

Mortgagee:

Ameristate Bank  
P. O. Box 718,  
Atoka, Oklahoma, 74525

Either party hereto may designate a new or different address for notice purposes to the other party by complying with the terms and provisions hereof.

26. Mortgage Covenants; Statutory Mortgage Condition. Mortgagor's grant of the mortgage provided for in this Mortgage is made with mortgage covenants and upon the statutory mortgage condition, for the breach of which this Mortgage is subject to foreclosure as provided by law.

27. No Waiver of Right of Redemption. Any waiver or sale by Mortgagor of its statutory right of redemption shall have no effect.

28. Governing Law. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OKLAHOMA AND THE LAW OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN SUCH STATE; PROVIDED, HOWEVER, THE LAWS OF THE STATE OF ALABAMA SHALL GOVERN THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS GRANTED IN THIS MORTGAGE. GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-



EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN OR FOR ATOKA, OKLAHOMA (OR ANY COURT OF COMPETENT JURISDICTION WHERE ANY PORTION OF THE MORTGAGED PROPERTY IS LOCATED) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, AND GRANTOR HEREBY AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY STATE OR FEDERAL COURT SITTING IN OR FOR ATOKA, OKLAHOMA (OR ANY COURT OF COMPETENT JURISDICTION WHERE ANY PORTION OF THE MORTGAGED PROPERTY IS LOCATED) MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO GRANTOR AT THE ADDRESS OF GRANTOR FOR THE GIVING OF NOTICES PURSUANT TO PARAGRAPH 25 HEREOF, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

29. Construction. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean any one, more than one or all of the "Mortgagor and/or any subsequent owner or owners of the Mortgaged Premises," the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage," the phrase "Note" shall mean "Note secured by this Mortgage", the word "person" shall mean "an individual, corporation, partnership or unincorporated association". The paragraph headings contained herein are included as a matter of convenience and are not intended to define, limit or modify the terms of this Mortgage. This Mortgage shall be binding on Mortgagor and all successors and assigns of each of Mortgagor and shall inure to the benefit of Mortgagee and all heirs, personal representatives, executors, successors and assigns of Mortgagee.

30. Amendment. This Mortgage cannot be changed except by an agreement in writing signed by the party against whom enforcement of the change is sought.

31. Multiple Counterparts. This instrument may be executed in any number of multiple counterparts, each of which shall for all purposes be deemed to be an original and one instrument, and all of which are identical, except that to facilitate recordation, in any particular counterpart portions of Exhibit A hereto which describes properties situated in counties or jurisdictions other than the county and jurisdiction in which such counterpart is to be recorded may have been omitted.

32. Legal Name. Mortgagor's exact legal name is correctly set forth at the end of this Mortgage. Mortgagor will not cause or permit any change to be made in its name, identity, or limited liability structure, unless Mortgagor shall have notified Mortgagee in writing at least thirty (30) days prior to the effective date of such change and shall have taken all action required by Mortgagee for the purpose of further perfecting or protecting the lien and security interest of Mortgagee in the Mortgaged Premises. Mortgagor's principal residence and the place where Mortgagor keeps books and records, including recorded data of any kind or nature, regardless of the medium or recording, including without limitation, software, writings, plans, specifications and schematics concerning the Mortgaged Premises, has for the preceding four months been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of Mortgagor set forth herein.

IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this instrument to Mortgagee.

TDG Operations, LLC

By: \_\_\_\_\_  
Jon Faulkner  
Vice President and Manager

"Mortgagor

**ACKNOWLEDGMENT**

STATE OF ALABAMA    )  
                          ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that Jon Faulkner whose name as Vice President and Manager of the TDG Operations, LLC, a limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this the \_\_\_\_ day of October, 2020.

My Commission Expires: \_\_\_\_\_  
                          Notary Public  
\_\_\_\_\_  
(SEAL)                   Printed Name: \_\_\_\_\_  
                          Commission No.: \_\_\_\_\_

EXHIBIT A

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TRACT 1

COMMENCING FROM THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 5 EAST, ESCAMBIA COUNTY, ALABAMA; THENCE RUN WEST A DISTANCE OF 214.84 FEET, MORE OR LESS, TO A 1/2" IRON REBAR WITH CAP (CA#604) FOR THE POINT OF BEGINNING; THENCE RUN SOUTH 00°17'59" EAST A DISTANCE OF 1135.35 FEET TO A 5/8" IRON REBAR WITH CAP (LS#21460) TO THE NORTH RIGHT-OF-WAY OF BYRNE DRIVE (60' WIDE RIGHT-OF-WAY); THENCE RUN SOUTH 88°03'01" WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 1003.26 FEET TO A 5/8" IRON REBAR WITH CAP (LS#21460); THENCE LEAVING SAID RIGHT-OF-WAY NORTH 00°16'57" WEST A DISTANCE OF 614.51 FEET TO A 5/8" IRON REBAR WITH CAP (CA#156); THENCE RUN NORTH 00°19'29" WEST A DISTANCE OF 790.50 FEET TO A 5/8" IRON REBAR WITH CAP (CA#156) TO THE SOUTH RIGHT-OF-WAY INDUSTRIAL PARK NORTH PERIMETER ROAD (60' WIDE RIGHT-OF-WAY); THENCE RUN NORTH 89°54'38" EAST ALONG SAID SOUTH RIGHT-OF-WAY A DISTANCE OF 792.95 FEET TO A 5/8" IRON REBAR WITH CAP (CA#156); THENCE RUN NORTH 88°21'04" EAST ALONG SAID SOUTH RIGHT-OF-WAY A DISTANCE OF 210.16 FEET TO A 5/8" IRON REBAR WITH CAP (LS#21460); THENCE LEAVING SAID SOUTH RIGHT-OF-WAY SOUTH 00°17'27" EAST A DISTANCE OF 242.81 FEET TO A 1/2" IRON REBAR WITH CAP (CA#604); SAID DESCRIBED PARCEL CONTAINING 31.98 ACRES, MORE OR LESS.

TRACT 2

COMMENCING FROM THE NORTHEAST CORNER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 5 EAST, ESCAMBIA COUNTY, ALABAMA; THENCE RUN SOUTH 89°43'02" WEST A DISTANCE OF 986.60 FEET TO A POINT; THENCE RUN SOUTH 02°50'09" WEST A DISTANCE OF 251.89 FEET TO A 1/2" IRON REBAR WITH CAP (LS#21466) ON THE WEST RIGHT-OF-WAY OF SWIFT MILL ROAD (60' WIDE RIGHT-OF-WAY) FOR THE POINT OF BEGINNING; THENCE RUN SOUTH 02°54'33" WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 871.58 FEET TO A 1/2" IRON REBAR WITH CAP (LS#21466) LYING ON THE NORTH RIGHT-OF-WAY OF BRYNE DRIVE (60' WIDE RIGHT-OF-WAY); THENCE RUN SOUTH 88°02'30" WEST ALONG SAID NORTH RIGHT-OF-WAY A DISTANCE OF 472.82 FEET TO A 5/8" IRON REBAR WITH CAP (LS#21460); THENCE LEAVING SAID NORTH RIGHT-OF-WAY NORTH 00°17'59" WEST A DISTANCE OF 884.79 FEET TO A POINT, SAID POINT LYING SOUTH 89°47'55" EAST A DISTANCE OF 0.90 FEET FROM A 1/2" IRON REBAR WITH CAP (LS#21466); THENCE RUN NORTH 89°47'55" EAST A DISTANCE OF 521.41 FEET TO THE POINT OF BEGINNING; SAID DESCRIBED PARCEL CONTAINING 10.01 ACRES, MORE OR LESS.

Prepared By: Scott Meacham  
 Crowe & Dunlevy  
 324 N. Robinson Ave, Ste. 100  
 Oklahoma City, OK 73102

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**REAL ESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING**

**(with Power of Sale)**

THIS REAL ESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (hereinafter called the "Mortgage") is made effective as of the 26th day of October, 2020, by and among TDG Operations, LLC, a Georgia limited liability company, having an address of 475 Reed Rd., Dalton, Georgia 30722, as mortgagor (the "Mortgagor"), and AmeriState Bank, an Oklahoma state banking corporation, having an address of 113 S. Pennsylvania St., Atoka, Oklahoma 74525, as mortgagee ("Mortgagee").

WHEREAS, Mortgagor and its affiliate through common ownership and control, The Dixie Group, Inc., a Tennessee corporation ("Co-Borrower"), have applied to Mortgagee for and Mortgagee has agreed to the extension of a \$10,000,000.00 term loan until October 26, 2045, evidenced by that certain \$10,000,000.00 Term Note dated as of October 26, 2020, as extended from time to time via amendment or otherwise, such promissory note from Mortgagor and Co-Borrower being payable to the order of the Mortgagee, accruing interest at the variable annual rate therein stated (such \$10,000,000.00 Term Note, as hereafter amended, extended, renewed, rearranged, substituted for, replaced, changed in form, consolidated or otherwise modified from time to time, being referred to herein as the "Note").

NOW, THEREFORE, to secure to Mortgagee the payment of the aforesaid mortgage indebtedness and the indebtedness and obligations hereafter described, Mortgagor does hereby grant, bargain, sell, convey, mortgage and grant a security interest unto Mortgagee and its successors and assigns, with power of sale, all of its right, title and interest in and to the real property located in Randolph County, Alabama, described in Exhibit A annexed hereto together with all and singular the tenements, hereditaments and appurtenances thereof; all buildings and improvements now or hereafter constructed thereon including (without limitation) all fixtures, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to the aforesaid property, and all buildings or improvements (all of which property is herein called the "Collateral"), and all proceeds and products thereof. The above-described real property, appurtenances, buildings, improvements and Collateral are hereinafter collectively called the "Mortgaged Premises" and are hereby declared to be subject to the lien of this Mortgage as continuing and continuous, first and prior mortgage lien and security interest, for the payment of the following described indebtedness and obligations:

- A. All indebtedness evidenced by the Note and all renewals, extensions, substitutions, replacements, changes in form, modifications, substitutions and rearrangements of the Note and of the indebtedness evidenced thereby.
- B. The performance by Mortgagor of each covenant, agreement and obligation of Mortgagor under this Mortgage and each covenant, agreement and obligation of Mortgagor under the Note and other loan documents or security instruments, including mortgages between or among the Mortgagor and the Mortgagee, as lender (collectively, the "Loan Documents").
- C. Any sums which may be advanced or paid by Mortgagee under the terms of this Mortgage on account of the default or failure of Mortgagor to comply with the covenants herein.
- D. The payment by Mortgagor and Co-Borrower to Mortgagee of any and all amounts reasonably expended by Mortgagee in exercising or attempting to exercise any right or remedy granted or otherwise available to Mortgagee upon the occurrence of an Event of Default under the Loan Documents.
- E. The payment by Mortgagor and Co-Borrower to Mortgagee of interest on all amounts expended by Mortgagee for any purpose specified in Paragraphs C and D above at the interest rate provided in the Note on the amount of each expenditure from the date thereof.
- F. All loans and advances which Mortgagee may hereafter make to Mortgagor or Co-Borrower and all other and additional debts, obligations and liabilities of every kind and character of Mortgagor now or hereafter arising in favor of Mortgagee, regardless of whether such debts, liabilities or obligations be direct or indirect, primary or secondary, joint, several, fixed or contingent, and irrespective of the manner in which the same may be incurred.

TO HAVE AND TO HOLD the Mortgaged Premises with all the rights, improvements and appurtenances thereunto belonging, or appertaining unto Mortgagee, its successors and assigns, forever. Mortgagor covenants that Mortgagor is well and lawfully seized of a good and indefeasible fee simple estate in the Mortgaged Premises, that Mortgagor is the lawful owner of and has a good and lawful right and title to sell, convey and mortgage and encumber the same, that the Mortgaged Premises are free and clear of all general and special taxes, liens, charges, assessments and encumbrances of every kind and character and that Mortgagor hereby warrants and will forever defend the title thereto against the claims or demands of all persons.

1. Payment of Indebtedness. If Mortgagor and Co-Borrower shall pay the indebtedness herein described, including (without limitation) the Note, and shall in all things do and timely perform all other acts and agreements herein contained to be done,





then, and in that event only, the Mortgagee shall cause a full satisfaction thereof to be filed for record in the real property records of the county in which this Mortgage is recorded.

2. Maintenance; Waste. With respect to the Mortgaged Premises, Mortgagor covenants and agrees: (a) to keep the same in good condition and repair; (b) to pay all general and special taxes and assessments and other charges that may be levied or assessed upon or against the same as they become due and payable and to furnish to Mortgagee receipts showing payment of any such taxes and assessments, if demanded; (c) to pay all debts for repair or improvements now existing or hereafter arising which may become liens upon or charges against the Mortgaged Premises; (d) to comply with or cause to be complied with all material requirements of any governmental authority relating to the Mortgaged Premises; (e) pursuant to the terms and conditions of Paragraph 3 below, to promptly repair, restore, replace or rebuild any part of the Mortgaged Premises which may be damaged or destroyed by any casualty whatsoever; and (f) to promptly notify Mortgagee of any damage to the Mortgaged Premises in excess of Fifty Thousand Dollars (\$50,000.00). Mortgagor further covenants and agrees that Mortgagor will not: (a) commit or suffer to be committed any waste of or on the Mortgaged Premises; (b) initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting, restricting or defining the uses which may be made of the Mortgaged Premises or any part thereof without the prior written consent of the Mortgagee; or (c) permit any lien or encumbrance of any kind or character to accrue or remain on the Mortgaged Premises or any part thereof other than the lien of this Mortgage.

3. Insurance. Mortgagor will keep or cause the tenant thereof to keep the Mortgaged Premises insured for the benefit of Mortgagee against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, marine, smoke, vandalism and malicious mischief, all in amounts as set forth in the Loan Documents), and shall provide Mortgagee with evidence of liability insurance in amounts as set forth in the Loan Documents) and, if applicable, flood insurance in an amount equal to the maximum amount of coverage made available with respect to the Mortgaged Premises under the National Flood Insurance Program (or evidence satisfactory to Mortgagee that the Mortgaged Premises are not located in an area designated by the Secretary of Housing and Urban Development as an area having special flood or mudslide hazards and that flood insurance is not required for this mortgage loan under the terms of any law, regulation or rule governing Mortgagee's activities), and when and to the extent reasonably required by Mortgagee, against any other risk insured against by persons operating like properties in the locality of the Mortgaged Premises; all insurance herein provided for shall be in form and with insurance companies reasonably approved by Mortgagee; regardless of the types or amounts of insurance reasonably required by the Loan Documents and approved by Mortgagee, Mortgagor will assign and deliver to Mortgagee all certificates and copies of policies of insurance which insure against any loss or damage to the Mortgaged Premises as collateral and further security for the payment of the indebtedness secured by this Mortgage, with Mortgagee named as first mortgagee, loss payee or an additional insured, whichever is appropriate as determined by Mortgagee pursuant to a mortgage clause endorsement acceptable to Mortgagee, on each such certificate and policy of insurance.

If Mortgagee by reason of such insurance receives any money for loss or damage, such amount shall, subject to the following proviso, be held by Mortgagee and paid to Mortgagor for the repair or restoration of the Mortgaged Premises, provided that Mortgagor shall not be in default hereunder. If Mortgagor shall have delivered to Mortgagee within sixty (60) days after such casualty: (a) evidence reasonably satisfactory to Mortgagee that any sale contract or long term loan commitment held by Mortgagor for the Mortgaged Premises will not be materially adversely affected by the casualty or the delay caused thereby in completion of or repairs in the Mortgaged Premises, (b) plans and specifications, in form and substance reasonably satisfactory to Mortgagee, for any such rebuilding or restoration, (c) a budget for rebuilding or restoration reasonably satisfactory to Mortgagee, and (d) evidence reasonably satisfactory to Mortgagee that Mortgagor has or will have upon receipt of insurance proceeds, all amounts necessary to pay the cost of such rebuilding or restoration.

Mortgagee may retain and apply the insurance proceeds toward payment of the indebtedness and obligations secured by this Mortgage. Mortgagee shall not be obligated to see to the proper application of any amount paid over to Mortgagor. Not less than twenty (20) days prior to the expiration dates of each certificate or policy required of Mortgagor pursuant to this Paragraph, Mortgagor will deliver to Mortgagee a renewal certificate and copy of the policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee. In the event of a foreclosure of this Mortgage, the purchaser of the Mortgaged Premises shall succeed to all the rights of Mortgagor, including any right to unearned premiums, in and to all certificates and policies of insurance assigned and delivered to Mortgagee pursuant to the provisions of this Paragraph.

Mortgagor specifically covenants and agrees that in the event Mortgagor has provided Mortgagee with evidence reasonably satisfactory to Mortgagee that flood insurance covering the Mortgaged Premises should not be required at the time of execution of this Mortgage and the Mortgaged Premises should thereafter become eligible for flood insurance under the National Flood Insurance Program, or under any subsequent Act of Congress of the United States, and should the Mortgaged Premises be located in an area now or thereafter designated by the Secretary of Housing and Urban Development as an area having special flood or mudslide hazards, Mortgagor and Mortgagor's successors in title shall maintain at its or their sole cost and expense flood insurance available under the National Flood Insurance Program, in such amounts and in such form as may be required by Mortgagee.

4. Alterations. No building or other property now or hereafter subject to the lien of this Mortgage shall be removed, demolished or materially altered, without the prior written consent of Mortgagee, except that Mortgagor shall have the right, without such written prior consent, to remove and dispose of, free from the lien of this Mortgage, such Collateral as from time to time may become worn or obsolete, provided that either: (a) simultaneously with or prior to such removal, any such Collateral shall be replaced with other Collateral of a value at least equal to that of the replaced Collateral and free from any title retention device, security agreement or other encumbrance, and by such removal or replacement, Mortgagor shall be deemed to have subjected such Collateral to the lien of this Mortgage; or (b) any net cash proceeds received from such disposition shall be paid over promptly to Mortgagee to be applied to the indebtedness hereby secured.

5. Default; Remedies. Upon the failure of Mortgagor to pay or cause the applicable tenant thereof to pay any of the taxes, assessments, debts, liens or other charges as the same become due and payable, or to insure the Mortgaged Premises or deliver the certificates of insurance and copies of the policies of insurance as herein provided, or to perform Mortgagor's covenants and agreements herein, Mortgagee is hereby authorized, at its option, to insure the Mortgaged Premises, or any part thereof, and pay the costs of such insurance, and to pay such taxes, assessments, debts, liens or other charges herein described, or any part thereof, and to remedy Mortgagor's failure to perform hereunder and pay the costs associated therewith, and Mortgagor hereby agrees to refund on demand all sum or sums so paid, with interest thereon at the interest rate specified in the Note; and any such sum or sums so paid



together with interest thereon shall become a part of the indebtedness hereby secured; provided, however, that the retention of a lien hereunder for any sum so paid shall not be a waiver of subrogation or substitution which Mortgagee might otherwise have.

In the event of the failure of Mortgagor within any applicable curative or grace period following any applicable written notice required from Mortgagee, if any, to pay any of the taxes, assessments, debts, liens or other charges herein described as the same become due and payable (subject to Mortgagor's right to protest the same pursuant to the terms, provisions and limitations of the Loan Documents) or to keep the Mortgaged Premises insured in the manner and time herein provided, or the failure to deliver renewal policies in the manner and time herein provided, or if any installment of principal or interest is not paid at or within the time required by the terms of the Note, or in the case of the failure of the Mortgagor to comply with the terms, provisions and conditions of paragraph 4 hereof in the event of actual destruction, demolition, removal, condemnation or taking of all or any major part of the Mortgaged Premises, or the failure to timely comply with the covenants and warranties of or to timely do any of the things herein agreed to be done within thirty (30) days following written notice from Mortgagee (except for payment obligations under the Note for which the requisite written notice therein prescribed (including the limitations of the frequency thereof) and a fifteen (15) day curative period is established) or on the foreclosure of or default under any other mortgage or deed of trust encumbering the Mortgaged Premises or any note instrument secured thereby, provided, that the foregoing shall not be deemed to constitute Mortgagee's consent to any other mortgage, or on the breach of any of the terms, provisions, covenants or warranties of the Note, the Loan Documents or this Mortgage or any other instrument securing or evidencing the indebtedness hereby secured, then, in any of such events, all of such indebtedness secured hereby, including the outstanding loan evidenced by the Note and all other obligations, without deduction, at the option of Mortgagee, without further or other notice, shall become immediately due and payable, and Mortgagee shall be empowered and entitled, at its option, to foreclose this Mortgage and shall be entitled to the possession of the Mortgaged Premises and the rents, lease payments, security deposits and profits and proceeds thereof, and shall be entitled to have a receiver appointed to take possession of the Mortgaged Premises.

At the option of the Mortgagee, this Mortgage may be foreclosed by judicial proceedings, or by non-judicial foreclosure sale in accordance with applicable laws, and to sell and dispose of the Mortgaged Premises and all the right, title, and interest of Mortgagor therein, by sale at any place authorized by law as may be specified in the notice of such sale to the highest bidder. If this Mortgage is foreclosed by non-judicial foreclosure sale pursuant to the power of sale, Mortgagee shall give notice of the foreclosure by publication once a week for 3 successive weeks. Such notice shall state the time, place and terms of each such sale by publication in some newspaper published in the county or counties in which the Mortgaged Premises are to be sold, or a substantial and material part thereof, is located. At such foreclosure sale, Mortgagee may sell the Mortgaged Premises (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of the courthouse door of such county, at public outcry, to the highest bidder for cash. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Mortgaged Premises may be sold as a whole or in separate parts, parcels, or tracts, including separate parts, parcels or tracts located in the same county, and in such manner and order as the Mortgagee in its sole discretion may elect. The exercise of the power of sale with respect to a separate part, parcel, or tract of the Mortgaged Premises in one county does not extinguish or otherwise affect the right to exercise the power of sale with respect to the other parts, parcels, or tracts of the Mortgaged Premises in that or another county to satisfy the obligation secured by the Mortgage, and the right and power of sale arising out of any Event of Default shall not be exhausted by one or more sales of the Mortgaged Property. At the foreclosure, Mortgagee shall be entitled to bid and to purchase the Mortgaged Premises and shall be entitled to apply the indebtedness secured by the Mortgage, or any portion thereof, in payment for the Mortgaged Premises. The Mortgagee shall be authorized to retain an attorney to represent it in such proceedings. Upon such sale, Mortgagee or the attorney conducting said sale are hereby authorized and empowered to make due conveyance to the purchaser or purchasers in the name of Mortgagor. The Mortgagor hereby irrevocably appoints Mortgagee to be the attorney in fact of the Mortgagor and in the name and on behalf of the Mortgagor to execute and deliver any deeds, transfers, conveyances, assignments, assurances, and notices which the Mortgagor ought to execute and deliver and do and perform any and all such acts and things which Mortgagor ought to do and perform under the covenants herein contained and generally to use the name of Mortgagor in the exercise of all or any of the powers hereby conferred on Mortgagee. Upon any sale, whether under the power of sale hereby given or otherwise, it shall not be necessary for Mortgagee or any public officer acting under execution or order of court to have physically present or constructively in its possession any of the Mortgaged Premises. In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the indebtedness secured by the mortgage, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest. The remedies provided to Mortgagee in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage, the Note, the Loan Agreement or any other Loan Document, by law or in equity, all of which rights and remedies may be exercised by Mortgagee independently, simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised.

6. Receivership. In the event Mortgagee elects to seek the appointment of a receiver following Mortgagor's non-performance, breach, default or violation of any condition, covenant or other agreement in this Mortgage or the note secured hereby, Mortgagee shall be entitled to appointment of a receiver without the necessity of establishing that the property is probably insufficient to discharge the mortgage debt, the express purpose and intent of this clause being hereby acknowledged by Mortgagor to provide for Mortgagor's express consent to the appointment of a receiver upon the occurrence of any breach, default, violation or other non-performance under this Mortgage by Mortgagor.

7. Taxes; Expenses. Mortgagor will pay, before same become delinquent or any penalty attaches thereto for nonpayment, any and all taxes, assessments and charges, general or special, of every nature and to whomsoever assessed, that may be now or hereafter levied or assessed under any law now existing or hereafter enacted, directly or indirectly upon the Mortgaged Premises or any part thereof, upon the rents, issues, income or profits thereof or upon the indebtedness secured hereby. Mortgagor will not suffer or permit any liens, security interests, levies, attachments or other encumbrances to become effective, or to be asserted, against any of the Mortgaged Premises, and will regularly and promptly submit to Mortgagee such evidence of the due and punctual payment of such taxes, assessments or charges as Mortgagee may require. The foregoing notwithstanding, Mortgagor may in good faith contest, by a proper legal proceeding, the validity or amount of any such taxes, assessments or charges, provided Mortgagor deposits with Mortgagee as security for payment of such contested taxes, assessments or charges an amount equal thereto, and further provided that Mortgagor will pay such contested item and all costs and penalties, if any, at least thirty (30) days before the date the Mortgaged Premises may be sold by the taxing authorities because of nonpayment of said taxes, assessments or charges.

Upon violation of the foregoing undertaking in any part, or upon the passage by the State of Florida of any law imposing payment of the whole or any part of the aforesaid taxes or assessments upon Mortgagee, or deducting from the value of the Mortgaged Premises for the purpose of taxation any liens thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes so as to materially adversely affect this Mortgage, or upon the rendering by any court of competent jurisdiction of a decision holding that any undertaking by Mortgagor to pay such taxes or assessments, or any of them, or any similar undertaking, is in whole or in part legally inoperative or void, then in such event, unless the applicable law permits Mortgagor to pay the same and Mortgagor in fact promptly pays all such taxes, the indebtedness secured hereby will, at the option of Mortgagee, without notice to any party, become immediately mature, due and payable. Mortgagor also agrees to pay any and all taxes which may be levied or assessed directly or indirectly upon the Note (except only any federal and state income taxes on the Note), this Mortgage and the indebtedness hereby secured, and further agrees to pay all reasonable expenses incurred in connection with the creation of the indebtedness hereby secured, including, without limitation, attorney's fees, title insurance fees, survey expenses and recording costs, without regard to any law which may be hereafter enacted imposing payment of the whole or any part thereof upon Mortgagee; and, upon violation of the foregoing agreement to pay such taxes and assessments, or if the rate of said taxes and expenses added to the respective rates of interest provided for in the Note shall exceed the then maximum legal rate of interest, then, and in any such event, the indebtedness hereby secured, without deduction, shall, at the option of Mortgagee become immediately due and payable, anything contained in this Mortgage or in the Note notwithstanding. The additional amounts which may become due and payable hereunder shall be regarded as part of the indebtedness secured by this Mortgage. This paragraph shall also apply to the amount to be paid under the present Florida mortgage registration tax laws, all of which amount the Mortgagor agrees to pay.

8. Tax and Insurance Accounts. For so long as ad valorem real estate taxes, special assessments and hazard and casualty insurance premiums are being timely paid and Mortgagor provides Mortgagee with evidence of such payment and no other condition or event exists or has occurred or failed to occur which but for the passage of time or the giving of notice or both would constitute an Event of Default under the Loan Documents and no such Event of Default exists, Mortgagee will waive the monthly escrow of such taxes, any special assessments and such insurance premiums, thereby permitting Mortgagor to forego such monthly escrow deposits. Such monthly tax and insurance deposits shall be held by Mortgagee and shall not bear or accrue interest, shall not be trust funds and upon default all such funds may be applied by Mortgagee on account of the Note and the other obligations secured hereby. Failure of Mortgagor so to make such monthly deposits or any deficiency in the amount thereof, unless made good or cured by Mortgagor prior to the next succeeding monthly installment due date, shall constitute an event of default hereunder. It shall be the responsibility of Mortgagor to furnish Mortgagee with tax bills or statements in sufficient time to timely pay the taxes and assessments before any penalty attaches or interest charges accrue thereon and the insurance premiums before any of the policies lapse.

9. Expenses of Collection. It is agreed that if, and as often as, this Mortgage or the Note are placed in the hands of an attorney for collection or for representation of Mortgagee in any bankruptcy, insolvency, probate or other judicial proceeding, or this Mortgage is referred to an attorney for collection or foreclosure, or to protect the priority or validity of this Mortgage, or to prosecute or defend any suit affecting the Mortgaged Premises, or to enforce or defend any of Mortgagee's rights hereunder, Mortgagor shall pay to Mortgagee its reasonable attorneys' fees, together with all court costs, expenses for abstracting or title examination, title insurance or other disbursements, costs or expenses relating to the Mortgaged Premises, all of which sums, together with interest thereon, shall be secured hereby.

10. Appraisal. In case of judicial foreclosure hereof and sale hereunder, appraisal of the Mortgaged Premises is hereby expressly waived, or not waived, at the sole option of Mortgagee, such option to be exercised thereby at the time judgment is entered in such foreclosure, or at any time prior thereto.

11. Sale in Parcels. In case of any sale under this Mortgage by virtue of judicial proceedings or otherwise, the Mortgaged Premises may be sold in one or more parcels and as an entirety.

12. Condemnation Awards. Mortgagor covenants and agrees that if at any time all or any portion of the Mortgaged Premises shall be taken or damaged under the power of eminent domain, the award received by condemnation proceedings for any property so taken or any payment received in lieu of such condemnation proceedings shall be paid directly to Mortgagee and, subject to compliance with the next succeeding sentence of this Paragraph 12, applied as a principal prepayment on the Note in such order as Mortgagee shall determine in its sole discretion. Subject to the same terms and conditions for payment of insurance proceeds to Mortgagor as set forth in Paragraph 3 above, such award or payment from condemnation proceedings shall be paid to Mortgagor for the purpose of altering, restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as a result of any such taking or damage; provided, that Mortgagee shall not be obligated to see to the application of any amount paid over to Mortgagor. If the terms for payment of such award to Mortgagor are not met, then Mortgagee may retain and apply the award toward payment of the indebtedness secured by this Mortgage. Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings or negotiations for the condemnation of the Mortgaged Premises, or any portion thereof, will notify Mortgagee in writing of the pendency of such negotiations or proceedings. Mortgagee may participate in any such negotiations or proceedings, and Mortgagor from time to time will execute and deliver to Mortgagee all instruments requested by Mortgagee to permit such participation.

13. Certificate. Mortgagor, upon written request of Mortgagee, made either personally or by mail, shall certify, by a writing duly acknowledged, to Mortgagee or to any proposed assignee of this Mortgage, the amount of principal and interest then secured by this Mortgage and whether Mortgagor has knowledge of any offsets or defenses against the indebtedness hereby secured, within ten (10) days after such request by Mortgagee.

14. Notice. Unless expressly provided to the contrary therein, every provision for notice, demand, consent or request shall be deemed fulfilled only upon compliance with the notice provisions more particularly described in Paragraph 25 hereof.

15. Renewals/Extensions/Future Advances. This Mortgage shall secure the payment of the indebtedness evidenced by the Note and any and all additional or other future loans or advances to Mortgagor by the holder hereof in connection with the Mortgaged Premises or any improvements now or hereafter located thereon, together with any renewals, extensions, replacements, modifications, rearrangements, consolidations, substitutions or extensions of the Note.

16. Inspection. Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Mortgaged Premises at all reasonable times upon reasonable prior notice to Mortgagor.

17. Indulgences, Extensions, No Waiver. No failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions hereof shall be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Neither Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the indebtedness now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Premises and Mortgagee extending, from time to time, the time of payment or modifying the terms of the Note or this Mortgage if the consent of Mortgagor has been obtained in connection with such modification to the extent Mortgagor remains liable on the Note, and in the latter event, Mortgagor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Premises, Mortgagee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for such indebtedness and may from time to time extend the time of payment or otherwise modify the terms of the Note and/or this Mortgage without, as to the security for the remainder thereof, in any way impairing or affecting the lien of this Mortgage or the priority of such lien, as security for the payment of the indebtedness as it may be so extended or modified, over any subordinate lien. Mortgagee may resort for the payment of indebtedness hereby secured to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

18. Prohibited Acts. Mortgagor will not, without the express prior written approval of Mortgagee: (a) sell, convey, mortgage, pledge or otherwise transfer or encumber all or any part of the Mortgaged Premises or any interest therein (such prohibition on encumbrance is deemed not to include mechanics' or materialmen's liens for which Mortgagor has provided indemnification, bonding or other action sufficient to prevent enforcement of such lien satisfactory to Mortgagee within thirty (30) days after the inception of such lien); or (b) create or suffer to exist any security interest, chattel mortgage or title retention device covering all or any part of the Collateral; or (c) permit any sale, conveyance, assignment, transfer, pledge, creation of any security interest, or other disposal of an encumbrance of, whether by operation of law or otherwise, any ownership interest in Mortgagor (except for any such transfer by operation of law by virtue of the death of a member owner to the surviving spouse or another existing member of Mortgagor and prompt written notice thereof to the Mortgagee). The occurrence of any of the aforesaid events, whether by operation of law or otherwise, without Mortgagee's prior written approval, shall, subject only to any applicable notice and curative provisions hereof, at Mortgagee's option, constitute an event of default hereunder, and Mortgagee may declare the indebtedness hereby secured immediately due and payable and exercise any or all of Mortgagee's rights herein provided without other or further notice. This provision shall apply to each and every sale, agreement to sell, conveyance, mortgage, transfer or encumbrance, regardless of whether or not Mortgagee has consented to or waived its rights hereunder, whether by action or inaction, in connection with any previous sale, conveyance, mortgage, transfer or encumbrance, whether one or more.

19. Cumulative Remedies. The rights of Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the other. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

20. Financial Reports. With respect to the Mortgaged Premises and Mortgagor's operation thereof, Mortgagor agrees to keep proper books of record and account in accordance with generally accepted accounting principles consistently applied. Mortgagee shall have the right to examine the books of record and accounts of Mortgagor and to discuss the business affairs, finances and accounts of Mortgagor and to be informed as to the same by Mortgagor, all at such reasonable times and intervals as Mortgagee may request. Mortgagor shall submit to Mortgagee annual financial statements, all to be delivered to and held by the Mortgagee on a confidential basis.

21. Security Interest. This Mortgage shall also be considered to be and shall be construed as a security agreement and a fixture filing with respect to any and all of the items and types of the Collateral herein described or referenced which may be subject to a security interest as a fixture filing pursuant to the Alabama Uniform Commercial Code, and Mortgagor hereby grants and pledges to Mortgagee a first and prior continuing security interest in and to Collateral, including the fixtures attached to and used exclusively in the operation and maintenance of the Mortgaged Premises (including all proceeds and products thereof), whether now owned or hereafter acquired, but specifically excluding personal property or fixtures used in the manufacturing business conducted on the Mortgaged Premises. Mortgagee shall be entitled to exercise any and all rights that it may have hereunder, under the Alabama Uniform Commercial Code with respect to the Collateral.

A. Additional Documents. Mortgagor will from time to time, within ten (10) days after request by Mortgagee, execute, acknowledge and deliver any fixture filing, continuation statement, or other similar documents that Mortgagee may reasonably request in order to protect, preserve, continue, perfect, extend or maintain the security interest under and the priority of this Mortgage and will, upon demand, pay any expenses and fees incurred by Mortgagee in the preparation, execution and filing of any such documents.

B. Fixture Filing. This Mortgage shall be filed of record in the real property records of Volusia County and the real estate records of each county where any part of the Mortgaged Premises is located as a fixture filing and covers all of the items and types of Collateral constituting or to constitute fixtures as defined in the Florida Uniform Commercial Code, and this Mortgage shall constitute a "fixture filing" as set forth in the Florida Uniform Commercial Code.

22. Bankruptcy. The entire indebtedness secured by this Mortgage shall become immediately due and payable at the option of Mortgagee if by order of a court of competent jurisdiction, a receiver or liquidator or trustee of Mortgagor (as defined in the



Loan Documents), or of all or any part of the Mortgaged Premises, shall be appointed and shall not have been discharged within thirty (30) days; or, if by decree of any such court, Mortgagor shall be insolvent or the Mortgaged Premises shall have been sequestered and such decree shall have continued undischarged and unstayed for thirty (30) days after the entry thereof; or if Mortgagor shall file or have filed against it a proceeding seeking relief under any provision or chapter of any bankruptcy or insolvency law or shall consent to the filing of any bankruptcy petition against Mortgagor under any such law; or Mortgagor shall file a petition or answer seeking reorganization, rehabilitation or an arrangement with creditors; or if (without limitation of the generality of the foregoing) Mortgagor shall make an assignment for the benefit of creditors, become insolvent or shall admit in writing an inability to pay debts generally as they become due, or shall consent to the appointment of a receiver, trustee or liquidator of Mortgagor, or of all or any part of the Mortgaged Premises.

23. Leases/Assignment of Rents and Profits. With respect to any and all applicable subsisting and future leases or rentals (collectively the "Leases") affecting the Mortgaged Premises, Mortgagor represents and agrees as follows to the fullest extent permitted by applicable law and regulation pertaining to the Mortgaged Premises and the tenants/residents thereof: (a) to perform faithfully Mortgagor's covenants under the Leases and neither do nor neglect to do, nor permit to be done, anything (other than pursuing the enforcement of the terms of such leases in the exercise of remedies thereunder, i.e., forcible entry and detainer, eviction, etc.) which might cause the modification or termination of any of the Leases (or of the obligations of any lessee or tenant or any person claiming through such lessee or tenant, respectively), or which might diminish or impair the value of any of the Leases or the rents provided for therein (or the interest of Mortgagor or Mortgagee therein or thereunder); (b) to permit no assignment of any of the Leases or any subletting thereunder and not to anticipate for more than one (1) month in advance of any rents (except only for prepayments by corporate lessees upon notice thereof from Mortgagor to Mortgagee) that may become collectible under any of the Leases; (c) except for this Mortgage and any other mortgage expressly permitted by the terms hereof, not to execute a mortgage or create or permit a lien affecting the Mortgaged Premises; (d) to execute and/or deliver to Mortgagee, within ten (10) days after request therefor, such rent rolls, collateral assignments, estoppel certificates (reciting, among other things, that all outstanding Leases are effective and binding), and other instruments as might be reasonably required by Mortgagee with respect to any Lease now or hereafter affecting the Mortgaged Premises; and (e) that all representations made by Mortgagor to Mortgagee in connection with the Leases are and will be true and correct.

Mortgagor hereby mortgages, pledges and collaterally grants and assigns to Mortgagee as additional security for the Note and the other obligations all of such Leases now existing or hereafter made of all or any part of the Mortgaged Premises together with all rents, lease payments, other profits and security deposits due or held or hereafter to become due or held in connection therewith. This assignment is intended to grant unto Mortgagee all rights, powers, remedies and privileges afforded to a mortgagee under 46 O. S. Section 4(A), as amended, and no additional duties or obligations (fiduciary or otherwise) except those expressly required of or imposed on mortgagees by the aforesaid statutory provision as a result of this or any other such collateral assignment pertaining to all or any portion of the Mortgaged Premises or exercise or attempted exercise of its rights hereunder or any other such collateral assignment executed by Mortgagor in connection with the Mortgaged Premises or any portion thereof.

24. Subrogation. To the extent funds are advanced under the Note hereby secured for the purpose of paying any indebtedness secured by any mortgage lien having priority over the lien of this Mortgage, Mortgagee shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by the holder of such prior mortgage. Except with respect to the priority of any mortgage to which Mortgagee is subrogated pursuant to the provisions hereof, the terms and provisions of this Mortgage shall govern the rights and remedies of Mortgagee and shall supersede the rights and remedies provided under any mortgage to which Mortgagee is subrogated.

25. Notices. All notices required hereunder or pursuant to the Loan Documents, the Note or any other collateral or security documents therein defined or described shall be mailed or delivered in accordance with and subject to the terms and provisions of Section 6.1 of the Loan Documents:

Mortgagor:

TDG Operations, LLC  
475 Reed Rd.  
Dalton, Georgia 30722

Mortgagee:

Ameristate Bank  
P. O. Box 718,  
Atoka, Oklahoma, 74525

Either party hereto may designate a new or different address for notice purposes to the other party by complying with the terms and provisions hereof.

26. Mortgage Covenants; Statutory Mortgage Condition. Mortgagor's grant of the mortgage provided for in this Mortgage is made with mortgage covenants and upon the statutory mortgage condition, for the breach of which this Mortgage is subject to foreclosure as provided by law.

27. No Waiver of Right of Redemption. Any waiver or sale by Mortgagor of its statutory right of redemption shall have no effect.

28. Governing Law. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OKLAHOMA AND THE LAW OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN SUCH STATE; PROVIDED, HOWEVER, THE LAWS OF THE STATE OF ALABAMA SHALL GOVERN THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS GRANTED IN THIS MORTGAGE. GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-





EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN OR FOR ATOKA, OKLAHOMA (OR ANY COURT OF COMPETENT JURISDICTION WHERE ANY PORTION OF THE MORTGAGED PROPERTY IS LOCATED) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, AND GRANTOR HEREBY AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY STATE OR FEDERAL COURT SITTING IN OR FOR ATOKA, OKLAHOMA (OR ANY COURT OF COMPETENT JURISDICTION WHERE ANY PORTION OF THE MORTGAGED PROPERTY IS LOCATED) MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO GRANTOR AT THE ADDRESS OF GRANTOR FOR THE GIVING OF NOTICES PURSUANT TO PARAGRAPH 25 HEREOF, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

29. Construction. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean any one, more than one or all of the "Mortgagor and/or any subsequent owner or owners of the Mortgaged Premises," the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage," the phrase "Note" shall mean "Note secured by this Mortgage", the word "person" shall mean "an individual, corporation, partnership or unincorporated association". The paragraph headings contained herein are included as a matter of convenience and are not intended to define, limit or modify the terms of this Mortgage. This Mortgage shall be binding on Mortgagor and all successors and assigns of each of Mortgagor and shall inure to the benefit of Mortgagee and all heirs, personal representatives, executors, successors and assigns of Mortgagee.

30. Amendment. This Mortgage cannot be changed except by an agreement in writing signed by the party against whom enforcement of the change is sought.

31. Multiple Counterparts. This instrument may be executed in any number of multiple counterparts, each of which shall for all purposes be deemed to be an original and one instrument, and all of which are identical, except that to facilitate recordation, in any particular counterpart portions of Exhibit A hereto which describes properties situated in counties or jurisdictions other than the county and jurisdiction in which such counterpart is to be recorded may have been omitted.

32. Legal Name. Mortgagor's exact legal name is correctly set forth at the end of this Mortgage. Mortgagor will not cause or permit any change to be made in its name, identity, or limited liability structure, unless Mortgagor shall have notified Mortgagee in writing at least thirty (30) days prior to the effective date of such change and shall have taken all action required by Mortgagee for the purpose of further perfecting or protecting the lien and security interest of Mortgagee in the Mortgaged Premises. Mortgagor's principal residence and the place where Mortgagor keeps books and records, including recorded data of any kind or nature, regardless of the medium or recording, including without limitation, software, writings, plans, specifications and schematics concerning the Mortgaged Premises, has for the preceding four months been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least thirty (30) days prior to the date of such change) the address of Mortgagor set forth herein.

IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this instrument to Mortgagee.

TDG Operations, LLC

By: \_\_\_\_\_  
Jon Faulkner  
Vice President and Manager

"Mortgagor

**ACKNOWLEDGMENT**

STATE OF ALABAMA    )  
                          ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that Jon Faulkner whose name as Vice President and Manager of the TDG Operations, LLC, a limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this the \_\_\_\_ day of October, 2020.

My Commission Expires: \_\_\_\_\_  
                          Notary Public  
\_\_\_\_\_  
(SEAL)                   Printed Name: \_\_\_\_\_  
                          Commission No.: \_\_\_\_\_

EXHIBIT A

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THE FOLLOWING DESCRIBED PROPERTY IN THE CITY OF ROANOKE, RANDOLPH COUNTY, ALABAMA CONTAINING 24.784 ACRES AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER (NW 1/4 OF SE 1/4) OF SECTION 2, TOWNSHIP 22 SOUTH, RANGE 12 EAST OF THE HUNTSVILLE MERIDIAN; RUN THENCE S 89 DEG. 51 MIN. 17 SEC. E 270.00' WITH THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2 TO A POINT ON THE WEST RIGHT OF WAY OF SHADY LANE DRIVE (60' RIGHT OF WAY):

RUN THENCE N 01 DEG. 54 MIN. 43 SEC. E 100.05' TO A POINT MARKED BY AN IRON PIN FOUND AND THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED, SAID POINT IS ALSO THE WEST END OF SUNSET DRIVE; RUN THENCE ALONG THE WEST END OF SUNSET DRIVE AND THE WEST SIDE OF SHADY LANE DRIVE S 01 DEG. 54 MIN. 43 SEC. W 628.38' TO A POINT MARKED BY AN IRON PIN FOUND THAT IS 500' MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF RUNWAY OF THE ROANOKE MUNICIPAL AIRPORT; RUN THENCE N 68 DEG. 03 MIN. 42 SEC. W PARALLEL TO AND 500' OFF THE CENTERLINE OF SAID RUNWAY A DISTANCE OF 753.22' ALONG THE PROPERTY OF CITY OF ROANOKE TO A POINT MARKED BY AN IRON PIN FOUND; RUN THENCE N 00 DEG. 56 MIN. 00 SEC. W 916.29' ALONG THE PROPERTY OF LAWS MECHANICAL AND ALADDIN MANUFACTURING CORP TO A POINT MARKED BY AN IRON PIN FOUND; RUN THENCE S 89 DEG. 58 MIN. 04 SEC. E 200.24' TO A POINT MARKED BY AN IRON PIN FOUND AT THE NORTHWEST CORNER OF THE CITY OF ROANOKE PROPERTY THAT IS THE SITE OF AN ELEVATED WATER TANK; CONTINUE AROUND THE ELEVATED TANK SITE S 26 DEG. 34 MIN. 24 SEC. E 101.00' TO A POINT MARKED BY AN IRON PIN FOUND; CONTINUE AROUND THE ELEVATED TANK SITE S 65 DEG. 43 MIN. 23 SEC. E. 82.00' TO A POINT MARKED BY AN IRON PIN FOUND; CONTINUE AROUND THE ELEVATED TANK SITE N 65 DEG. 47 MIN. 15 SEC. E 82.00' TO A POINT MARKED BY AN IRON PIN FOUND; CONTINUE AROUND THE ELEVATED TANK SITE N 26 DEG. 38 MIN. 16 SEC. E 101.00' TO A POINT MARKED BY AN IRON PIN FOUND ON THE ALADDIN MANUFACTURING CORP. PROPERTY LINE; RUN THENCE ALONG THE ALADDIN MANUFACTURING CORP. PROPERTY LINE S 89 DEG. 58 MIN. 04 SEC. E 719.46' TO A POINT MARKED BY AN IRON PIN FOUND AT THE PROPERTY OF MALIA ANN AND BRENDA JEAN HILL; RUN THENCE ALONG THE HILL PROPERTY LINE S 04 DEG. 41 MIN. 51 SEC. E 420.00' TO A POINT MARKED BY AN IRON PIN FOUND; CONTINUE ALONG THE HILL PROPERTY LINE S 89 DEG. 58 MIN. 04 SEC. E 525.00' TO A POINT MARKED BY AN IRON PIN FOUND ON THE WESTERLY RIGHT OF WAY OF OLD U.S. 431/LAFAYETTE HIGHWAY; CONTINUE ALONG SAID LAFAYETTE HIGHWAY S 08 DEG. 22 MIN. 17 SEC. E 154.21' TO A POINT MARKED BY AN IRON PIN FOUND ON THE NORTH RIGHT OF WAY OF SUNSET DRIVE (100' RIGHT OF WAY); RUN THENCE ALONG THE NORTH RIGHT OF WAY OF SUNSET DRIVE N 89 DEG. 51 MIN. 17 SEC. W 1006.97' TO THE POINT OF BEGINNING.

TOGETHER WITH THE EASEMENT BENEFITING THE SUBJECT PROPERTY AND RESERVED UNDER THAT CERTAIN CORPORATION QUIT CLAIM DEED WITH RESERVATIONS OF EASEMENT, AS RECORDED IN BOOK 270, PAGE 259, RANDOLPH COUNTY, REAL PROPERTY RECORDS.

## LOAN AGREEMENT

THIS LOAN AGREEMENT (the “Loan Agreement” or “Agreement”) is made and entered into on October 29, 2020, by and between **Greater Nevada Credit Union**, a non-profit cooperative corporation organized under the laws of the State of Nevada, together with its successors and assigns, (the “Lender”), **The Dixie Group, Inc.**, a Tennessee corporation, (“Dixie”) and **TDG Operations, LLC**, a Georgia limited liability company (“TDG” and together with The Dixie Group, Inc., individually and collectively, the “Borrower”), jointly and severally. Borrowers are referred to each as an “Obligor” and collectively as the “Obligors”, and Lender and Obligors are referred to each individually as a “Party” and collectively as the “Parties”.

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### PRELIMINARY STATEMENT

WHEREAS, Borrower desires financing in the sum of \$15,000,000.00 for the purpose of debt refinance, working capital, and to pay certain loan closing costs and other purposes.

WHEREAS, subject to the terms and conditions of this Loan Agreement and the other Loan Documents, Lender is willing to make the Loan to Borrower; and

WHEREAS, Lender has applied for and obtained a commitment for a loan note guarantee from the United States Department of Agriculture under its Business & Industry CARES ACT loan program, for the issuance of a loan note guarantee for 90% of the principal amount of the Loan.

### Statement of Agreement

NOW, THEREFORE, in consideration of the foregoing premises, which are hereby affirmed by each Obligor to be true and correct, the mutual agreements of the Parties set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do covenant and agree as follows:

**1. Definitions.** For the purposes of this Loan Agreement, capitalized terms used but not otherwise defined in this Loan Agreement shall have the meaning as follows:

1.1 “Affiliate(s)” means, with respect to the subject Person: (a) any Person directly or indirectly owning fifty-one percent (51%) or more of the membership or equity interests or rights in the subject Person or of which the subject Person owns fifty-one percent (51%) or more of such voting stock or rights; (b) any Person controlling or controlled by or under common control with the subject Person; (c) any officer, director or managing employee or agent of the subject Person; (d) any immediate family member of the subject Person; or (e) any Affiliate of such named Person.

1.2 “Assignment of Leases and Rents” means the assignment document by that name from Borrower for the benefit of Lender and dated the date hereof.

1.3 “Borrower” means any such party so identified in the opening paragraph of this Agreement, together with its successors and assigns.

1.4 “Business Day” means any day on which Lender is open for business.

1.5 [Reserved]

1.6 “Certificate of Title” shall have the meaning assigned thereto in the Code.

1.7 “Chattel Paper” shall have the meaning assigned thereto in the Code.

1.8 “Change in Control” means that (a) Permitted Holders fail to own and control, directly or indirectly, the Stock of The Dixie Group, Inc. representing the right to vote 20% of the total voting rights for the election of members of its Board of directors, (b) and “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Exchange Act), other than Permitted Holders, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of the Stock of The Dixie Group, Inc. representing the right to vote 35% of the total voting rights for the election of members of the Board of Directors, (c) a majority of the members of the Board of Directors do not constitute Continuing Directors, or (d) The Dixie Group, Inc. fails to own and control, directly or indirectly, 100% of the Stock of TDG Operations, LLC other than by merger of TDG Operations, LLC into The Dixie Group, Inc.

1.9 “Closing” or “Closing Date” means the effective date of this Agreement as above first written.

1.10 “Code” means the Uniform Commercial Code as in effect under the laws of the State of Tennessee from time to time, as the same may be amended.

1.11 “Collateral” means the Personal Property Collateral, the Real Property Collateral and such other security interests described in Section 5.1 hereof and in each of the Collateral Documents, together with any other personal or real Property otherwise pledged, transferred or assigned to Lender as security for the repayment and performance of the Obligations, or any portion thereof, whether occurring in the past, concurrently herewith or in the future.

1.12 “Collateral Documents” means the Future Advance Mortgages, Assignment of Rents and Leases, Security Agreement and Fixture Filing, the Security Agreement, the UCC Financing Statements and all other documents and agreements intended to pledge any of the Collateral as security for the Loan, together with all amendments and supplements to any of the forgoing agreements that have been entered into in accordance with the terms thereof.

1.13 “Continuing Directors” means (a) any member of the Board of Directors who was a director of The Dixie Group, Inc on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by either the Permitted Holders or a majority of the Continuing Directors, but excluding any such individual originally proposed for election in opposition to the Board of Directors in office at the Closing Date in an actual or threatened election contest relating to the election of the directors of The Dixie Group, Inc. and whose initial assumption of office resulted from such contest or the settlement thereof.

1.14 “Covenant Compliance Certificate” means the Covenant Compliance Certificate as more particularly described on Schedule 4.1(b) hereof.

1.15 “Deposit Accounts” shall have the meaning assigned thereto in the Code.

1.16 “Environmental Indemnity Agreement” means the agreement by that name dated as of the date hereof between Borrower and Lender, together with any amendments, supplements and modifications thereof.

1.17 “Environmental Laws” shall mean as defined in the Environmental Indemnity Agreement applicable state, federal or local environmental laws or regulations pertaining to the protection of human health and the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 1101 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act of 1974, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Endangered Species Act, 16 U.S.C. 1531 et seq.; any laws regulating the use of biological agents or substances including medical or

infectious wastes, each as amended or supplemented, and any applicable and analogous future or present local, state, and federal statutes, regulations, and ordinances promulgated pursuant thereto.

1.18 “Equipment” shall have the meaning assigned thereto in the Code.

1.19 “Event of Default” shall have the meaning set forth in Section 6.

1.20 “Financial Covenants” shall have the meaning set forth in Section 4.3.

1.21 “Financial Statements” means an income statement, balance sheet, profit and loss statement and statement of cash flows, and any other such statement relating the financial condition, present, past, or future, of such Person; all of the foregoing shall be accompanied by any supporting schedules, prepared in accordance with GAAP, and in a form and of substance satisfactory to Lender.

1.22 “Fixtures” shall have the meaning assigned thereto in the Code.

1.23 “GAAP” means generally accepted accounting principles and practices as in effect from time to time and recognized as such by the American Institute of Certified Public Accountants, consistently applied.

1.24 “Governmental Authority” shall mean any federal, state, municipal, national, local or other governmental department, court, commission, board, bureau, agency or instrumentality of political subdivision thereof, or any entity or officer exercising executive, legislative or judicial, regulatory or administrative functions of or pertaining to any government of any court, whether of the United States or a state, territory or possession thereof, a foreign sovereign entity or country or jurisdiction of the District of Columbia.

1.25 “Indebtedness” means, collectively, all liabilities (including, without limitation, capital lease obligations) of the subject Person, whether owing by such Person alone or with one or more others in a joint, several, or joint and several capacity, whether now owing or hereafter arising, whether owing absolutely or contingently, whether created by loan, overdraft, guaranty of payment, or other contract or by quasi-contract or tort, statute or other operation of law or otherwise, including but not limited to the Obligation.

1.26 “Intercompany Transaction” means any Account, Chattel Paper, General Intangible, Instrument, Document or other Indebtedness or obligation arising from business done with or for, or Indebtedness owed between or among, the subject Person and any Subsidiary or Affiliate of such Person.

1.27 “Inventory” shall have the meaning assigned thereto in the Code.

1.28 “Lender” means such party so identified in the opening paragraph of this Agreement, together with its successors and assigns.

1.29 “Lien” includes: (i) any interest in property (real property, personal property or mixed, and tangible or intangible) securing an obligation owed to, or a claim by, a Person other

than the owner of the property, whether such interest is based on law, statute, or contract, and including, but not limited to, the security interest, security title or lien arising from a security agreement, mortgage, mortgage, deed to secure debt, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes; and (ii) any covenants, conditions, restrictions, leases and other encumbrances affecting any property.

1.30 “Loan Documents” means this Loan Agreement, the Note, the Collateral Documents, the USDA Guarantee, any Covenant Compliance Certificate, any financing statements, collateral documents, consents and all other documents, instruments, certificates and agreements executed and/or delivered by any Obligor or any third party in favor of Lender in connection with the Loan or any Collateral, whether executed and/or delivered prior to the Closing Date, concurrently herewith or at any time hereafter; all of the foregoing together with any modifications, extensions, renewals, amendments or replacements thereof.

1.31 “Loan” means, the secured loan from Lender to Borrower in the principal amount of \$15,000,000 as evidenced by the Note and made pursuant to the terms of this Loan Agreement and other Loan Documents, together with any other loan made by Lender, whether now existing or in the future, stating that it is governed by or subject to this Loan Agreement; all of the foregoing together with any modifications, extensions, renewals, amendments or replacements thereof.

1.32 “Material Adverse Change” means for the subject Person, the occurrence of events or circumstances which, if unchanged, would materially and adversely impair such Person’s: (i) financial condition, or (ii) ability to meet its financial obligations as they become due, or (iii) ability to conduct its business as conducted immediately prior to the occurrence of such events or circumstances.

1.33 “Maturity Date” means October 29, 2030.

1.34 “Mortgage” means individually, and “Mortgages” means collectively, those certain Future Advance Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statements each executed by Borrower for the benefit of Lender of even date herewith pursuant to Section 5.1, granting mortgage liens on the real property located in the State of Alabama, as further described under the definition of “Real Property”, together with any amendments and supplements to any of the forgoing incorporated by reference herein.

1.35 “Obligations” means: (a) any and all principal and interest outstanding under the Note, together with any and all other Indebtedness, obligations, performance and liabilities of Borrower to Lender, or any affiliate of Lender, from time to time, including, without limitation, any and all Indebtedness, liabilities and obligations of Borrower which may at any time become due under this Loan Agreement and under any other Loan Document; all of the foregoing whether now existing or hereafter arising, whether advanced, now or in the future, paid down and re-advanced, whether related or unrelated to the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, whether recovery upon such



amounts may be or hereafter may become barred by any statute of limitations, whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable, and irrespective of the effect of any bankruptcy or insolvency action; (b) all renewals, extensions and modifications of any of the foregoing or any part thereof; and (c) any of the foregoing that arise after the filing of a petition by or against Borrower under the United States Bankruptcy Code, even if the obligations do not accrue because of the automatic stay under United States Bankruptcy Code Section 362 or otherwise.

1.36 “Obligor” and “Obligors” means as defined in the opening paragraph of this Agreement.

1.37 “Parties” means any such party identified in the caption of this Agreement.

1.38 “Permitted Holders” means Daniel K. Frierson, his family and their respective spouses, children, grandchildren and any trusts for the sole benefit of any of the foregoing Persons.

1.39 “Permitted Indebtedness” means as specified in Section 4.2(f) hereof.

1.40 “Permitted Liens” means those Liens specified in Section 4.2(g) hereof.

1.41 “Person” means an individual person, corporation, limited liability company, trust, joint venture, limited or general partnership, any government or agency or political subdivision of any government, or any other entity or organization.

1.42 “Personal Property Collateral” shall have the meaning as set forth in Section 5.1(a).

1.43 “Project” means the refinancing of equipment hereunder pursuant to a CARES ACT loan from Lender to Borrower as evidenced by this Loan Agreement and that certain Promissory Note of even date herewith and secured by the Personal Property Collateral described in the Security Agreement and by the Real Property Collateral located at 209 Carpet Drive, Atmore, Alabama 36502 and the facility located at 1130 Lafayette Highway, Roanoke, Alabama 36274, as more particularly described in the Mortgages, together with all improvements, easements, rights of way and fixtures relating thereto, but excluding other equipment that may be affixed to the Real Property Collateral but is not included in the Personal Property Collateral.

1.44 [Reserved.]

1.45 “Promissory Note” or “Note” means, the Promissory Note dated the date hereof and in the principal amount of \$15,000,000.00, from Borrower to Lender, together with any modifications, extensions, renewals, amendments or replacements thereof.

1.46 “Real Property Collateral” means certain real property of Borrower, and other rights arising from or incidental thereto, as more particularly provided in the Mortgages or as otherwise pledged or assigned to Lender as security for the Obligations, or any portion thereof, whether occurring in the past, concurrently herewith or in the future, including, but not limited to

the Project; all of the foregoing together with other interests arising from or related thereto, all improvements, buildings and Fixtures now or hereafter located thereon, together with all mineral and water rights, and any and all proceeds arising from any of the foregoing, and any appurtenances and other rights, rents, royalties, claims or benefits arising from or pertaining thereto.

1.47 “Security Agreement” means the Security Agreement executed by Borrower in favor of Lender pursuant to Section 5.1 hereof, in form satisfactory to Lender, and granting to Lender a first priority lien in and on the Personal Property Collateral.

1.48 “Servicer” means as defined in Section 2.11 hereof.

1.49 “Solvent” or “Solvency” mean, with respect to the subject Person, where such Person: (i) owns property (real property, personal property, or a combination thereof) whose aggregate fair saleable value is greater than the amount required to pay all of such Person’s Indebtedness (including contingent debt (it being understood that the amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability)); (ii) is able to pay all of its Indebtedness as such Indebtedness comes due or matures; and (iii) has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage.

1.50 “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).

1.51 “Subsidiary” means any corporation, limited liability company, general or limited partnership or other entity or business enterprise in which subject Person, directly or indirectly, owns more than fifty percent (50%) of the stock, equity, capital or other interests (legal or beneficial) which is effectively controlled, directly or indirectly, by such Person.

1.52 “Substances” means as defined in the Environmental Indemnity Agreement, any hazardous or toxic substance or wastes as defined by or under any Environmental Laws, including, but not limited to, friable asbestos, PCBs in regulated concentrations, petroleum products, fertilizers, pesticides and any animal, agricultural or agricultural waste or byproducts, but excluding substances used in minimal amounts in the ordinary course of business to produce the Inventory in material compliance with applicable Environmental Laws.

1.53 “Tangible Net Worth” means total assets (excluding goodwill, patents, trademarks, trade names, organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) less Total Liabilities.

1.54 “Total Liabilities” means all of the subject Person’s liabilities, including accrued and deferred income taxes and any reserves against assets, determined in accordance with GAAP, consistently applied.

1.55 “USDA” means the United States Department of Agriculture and any successor federal agency.

1.56 “USDA Conditional Commitment” means the Conditional Commitment for Guarantee, Form RD 4279-3, issued to Lender on October 08, 2020, and all exhibits and amendments thereto, for the issuance of a Loan Note Guarantee for 90% of the principal amount of the Loan plus up to 90-days interest thereon.

1.57 “USDA Loan Note Guarantees” means the Loan Note Guarantees issued by the USDA to Lender in pursuant to the USDA Conditional Commitment, USDA Form 4279-5, and which are assigned to Notes numbered 2 through 10.

1.58 [Reserved.]

**2. The Loan and Disbursements.** Lender hereby agrees to make or continue to make the Loan, as applicable, to Borrower on the terms and conditions set forth herein. The obligation of the Borrower to repay the Loan and the terms for repayment shall be evidenced by, and set forth in, the Note.

2.1 Loan. Subject to the terms and conditions of this Loan Agreement and the other Loan Documents, Lender hereby agrees to make the Loan to Borrower in the original principal amount of Fifteen Million and No/100 dollars (\$15,000,000.00). At Closing, the proceeds of the Loan will be used to pay for debt refinancing and to pay all costs of Closing pursuant to the closing settlement statement (the “Settlement Statement”) executed by Lender and Borrower at Closing with any undisbursed amount being available for draw by the Borrower on a monthly basis to meet their working capital needs. The obligation to repay the Loan, and the interest rates and terms of payment, are set forth in the Note and secured by the Mortgages and other Collateral Documents. The Loan shall mature on the Maturity Date.

2.2 Borrower’s Equity Contribution. Borrower will demonstrate that it has a minimum of ten percent (10%) investment in the Project at Loan Closing using one of the three following methods:

- a) A Minimum ten percent (10%) Tangible Balance Sheet Equity at Closing. “Tangible Balance Sheet Equity” must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the business’ balance sheet. Tangible Balance Sheet Equity will be determined by using a balance sheet of Borrower prepared in accordance with GAAP and will not include appraisal surplus, bargain purchase gains, goodwill and other intangible assets. The balance sheet must take into account any new assets, the guaranteed loan amount, and any non-guaranteed debt as liabilities of the Borrower, regardless of whether the Loan has been fully disbursed or remain(s) to be

disbursed. The balance sheet and the calculation of Tangible Balance Sheet Equity must be acceptable to Lender and the USDA;

- b) A cash ownership equity investment equal to at least ten percent (10%) of the Borrower's total fixed assets before depreciation; or
- c) A minimum of ten percent (10%) investment to the Project.

### 2.3 [Reserved]

2.4 Loan Payments. All sums paid by Borrower on the Loan and hereunder shall be paid directly to Lender or its designated Servicer in immediately available funds no later than 2:00 p.m., central standard time, on the date on which payment is due, except if such date is not a Business Day such payment shall then be due on the first (1<sup>st</sup>) Business Day after such date, but interest shall continue to accrue until the date payment is received. Any payment received after 2:00 p.m., central standard time, shall be deemed to have been received on the immediately following Business Day for all purposes, including, without limitation, the accrual of interest on principal. Lender shall send Borrower statements of all amounts due hereunder, which statements shall be considered correct and conclusively binding on Borrower unless Borrower notifies Lender to the contrary within five (5) Business Days of its receipt of any statement which it deems to be incorrect.

2.5 Purpose of Loan. The purpose of the Loan is to provide the necessary financing to refinance debt incurred after February 15, 2020 owed to Wells Fargo Capital Finance, LLC in the amount of Fourteen Million Four Hundred Thousand and No/100 Dollars (\$14,400,000.00), as set forth in the Borrower's application submitted to the USDA for issuance of the USDA Guarantee and the USDA Conditional Commitment (including any USDA approved amendments thereto). Loan funds will be used for debt refinancing and to pay loan closing costs in accordance with the USDA Conditional Commitment. Loan funds cannot be used for payment to any owner, partner, stockholder, beneficiary of Borrower, other Affiliates.

2.6 Set-Off. Lender may, in its sole and absolute discretion, charge against any Deposit Account of Borrower held by or under the control of Lender, or advance to Borrower and charge to the Loan, all or any part of any Obligation due from Borrower, including, without limitation: (i) interest, principal, fees and expenses due under the Note or as otherwise provided in this Agreement or the other Loan Documents; (ii) any overdraft amounts in any of Borrower's Deposit Accounts; and (iii) any reasonable and customary costs incurred by Lender to protect or inspect the Collateral as provided in the Loan Documents.

2.7 Lender's Right to Apply Payments. Notwithstanding any provision herein to the contrary, if an Event of Default has occurred and is continuing, Borrower irrevocably waives the right to direct the application of any and all payments and collections at any time or times hereafter received by Lender from or on behalf of Borrower or from any of the Collateral, and Borrower does hereby irrevocably agree that Lender shall have the continuing exclusive right to apply such payments and collections received at any time or times hereafter by Lender or its agent against the Obligations, in the manner set forth in Section 7.2 hereof.

2.8 Conditions Precedent to Closing of Loan. Lender will disburse the proceeds of the Loan to Borrower in accordance with the terms and conditions of this Loan Agreement if all matters, documents, papers and certificates required under this Loan Agreement and the other Loan Documents have been furnished to Lender's satisfaction, including, without limitation, the following documents and matters, each in form and of substance satisfactory to Lender, due on or before the Closing Date, unless otherwise provided, PROVIDED, HOWEVER, that Lender shall have no obligation to advance any sum to Borrower if Borrower is not in full compliance with all covenants hereunder if an Event of Default has occurred and is continuing:

2.8(a) Execution and Delivery of All Loan Documents. All Loan Documents have been duly executed and delivered, and any other such matters as set forth herein shall have been satisfied;

2.8(b) Authority and Compliance Documents. Any documents Lender may require: (i) to establish the authority of any Obligor to enter into this Agreement and the other Loan Documents including, but not limited to, governing instruments, certificates of incumbency and resolutions of the appropriate governing body; and (ii) to establish the good standing of any Obligor with any relevant governing, taxing, or regulatory body, including, but not limited to, certificates of existence and tax compliance certificates; all of the foregoing in a form and of substance satisfactory to Lender and certified as to completeness and accuracy by the appropriate officer of such Obligor;

2.8(c) Title Insurance and Surveys. In connection with the Real Property Collateral, Borrower shall cause to be delivered to Lender, at or prior to Closing, a pro forma ALTA title insurance policy in the name of Lender, together with any endorsements required by Lender, and containing no exceptions which are unacceptable to Lender, and endorsed as of the Closing Date and in amounts satisfactory to Lender; and (ii) an ALTA/NSPS Land Title Survey of the Real Property Collateral, certified to Lender, the USDA and the Title Insurance Company and dated within 30 days prior to Closing, in form and content satisfactory to Lender;

2.8(d) Assurance of Lien Position. Assurances of Lender's requisite lien position with respect to the Collateral, including, but not limited to, Lender's receipt of consents and waivers from third parties claiming rights in the Collateral under statute, contract or otherwise;

2.8(e) Third-Party Lenders. Lender shall have assurances that Borrower does not have any other loan outstanding from any third-party lender or other Person except as expressly set forth on Schedule 2.8(e) attached hereto;

2.8(f) Financial Statements and Other Periodic Reports. Each Obligor's interim Financial Statements and all other periodic reports described on Schedule 4.1(b) for the most recently ended reporting period closest to the Closing Date, and any other financial information with respect to any Obligor as Lender may reasonably require, including, but not limited to, the most recent annual Financial Statements of each Obligor;

2.8(g) Payment of Fees and Closing Costs. Payment of all fees and closing costs required hereunder and under the other Loan Documents;

2.8(h) [Reserved];

2.8(i) USDA Conditional Commitment and USDA Guarantee. (i) Borrower shall have satisfied all conditions precedent and all terms, conditions, covenants and requirements under the USDA Conditional Commitment to the satisfaction of Lender and the USDA and (ii) USDA shall have issued the USDA Guarantee in form and of substance satisfactory to Lender;

2.8(j) Opinion of Counsel. An opinion letter, or letters, each from an attorney acceptable to Lender, which shall provide, among other things requested by Lender, that: (i) Borrower is duly organized, validly existing and in good standing under the laws of the state of Borrower's charter and any other state or jurisdiction where such Borrower regularly does business; (ii) each Obligor has the full power and authority to undertake the activities contemplated by the Loan Documents; (iii) all Loan Documents have been duly authorized, executed and delivered by each Obligor; (iv) the Collateral Documents create a lien on or security interest in the Collateral except when otherwise specified in such opinion letter; (v) the Loan Documents and their terms do not violate any laws including, without limitation, any usury laws or similar laws of the jurisdictions where any Obligor or any Collateral is located; (vi) each Loan Document constitutes the valid and legally binding obligation of Borrower and its enforceable in accordance with its terms under the laws of the State of Tennessee; and (vii) such other matters are Lender and its legal counsel may request;

2.8(k) [Reserved]

2.8(l) [Reserved]

2.8(m) Borrower's Equity Contribution. Borrower will provide Lender with a evidence of Borrower's Equity Contribution, as required under Section 2.2 above.

2.8(o) Permits and Licenses. Borrower has acquired, or has the ability to acquire without undue delay, all required permits, pathways and registrations from the appropriate Governmental Authorities for the full operation of the Personal Property Collateral and the Real Property Collateral.;

2.8(p) [Reserved]

2.8(q) Other Filings. TDG shall have made such filings with the Nevada Secretary of State as needed to qualify to transact business in the State of Nevada; and

2.8 (r) Other Matters. Such other matters as Lender may reasonably require have been completed to its satisfaction.

2.9 Fees and Deposits. In addition to any other payment or reimbursement obligations of any Obligor set forth in this Agreement and the other Loan Documents, Borrower shall pay the following fees and make the following deposits:

2.9(a) Closing Fee. Borrower shall pay or cause to be paid to Lender and other parties at Closing the following fees: (i) the loan origination fee to Lender in the amount of \$150,000.00; (ii) the USDA fees for the issuance of the USDA Guarantee(s) equal to \$270,00.00; and (iii) the fees and costs listed on the settlement statement executed by the Parties for Closing.

2.10 [Reserved]

2.11 Servicing the Loan and the Servicer. Lender is granted the right to appoint a Person to assist Lender in servicing the Loan (the "Servicer") and has appointed Greater Commercial Lending ("GCL") to be the initial Servicer. Lender may substitute any Servicer upon providing written notice thereof to Borrower. Upon such appointment, the Servicer shall have full authority to act on Lender's behalf on all matters applicable to the Loan, the Borrower, the Collateral and the Project, including, without limitation, the following:

2.11(a) The Servicer shall have full authority to service the Loan and to take any and all actions on behalf of the Lender under this Loan Agreement and under all other Loan Documents with respect to the Loan, the Borrower, and the Project including, without limitation, administering the Loan, dispersing loan proceeds, approving the disbursement of funds from the Project Accounts, approving payment requests, holding required reserves and deposits, receiving and administering Loan payments and other payments under the Loan Documents, communicating with Borrower, requesting and receiving reports and information, administering inspections, providing notices to Borrower and any Persons, providing demands for payment under the Note, approving or declining the taking of actions, providing consents and approvals (or declinations) for waivers, amendments or other approvals, enforcing of all rights and remedies under the Loan Documents on Lender's behalf, and any other activities relating to the Loan.

2.11(b) All reports, documents, notices, schedules, financial statements and other materials that are to be delivered to Lender under this Loan Agreement and the other Loan Documents are to be delivered to, and addressed to, the Servicer in addition to the Lender.

2.11(c) All payments under the Note, and payments of other Obligations due Lender, are to be made to Servicer, which, upon receipt in full by Servicer, shall be deemed made to and received by Lender.

2.11(d) GCL shall be the initial Servicer of the Loan. The appointment of Servicer, and its duties and authorizations, may be modified, transferred to another Person, or terminated by Lender, upon the delivery of written notice thereof from Lender to Borrower and the then current Servicer. Such notice to be delivered at least ninety (90) days prior to the date of modification, transfer or termination, as the case may be, and such notice shall include the following information; the effective date of the change in Servicer and contact information for the Servicer, including contact person, phone number, email address and mailing address.

**3. Representations and Warranties.** To induce Lender to make and/or continue to make the Loan, Borrower, as noted, makes the following representations and warranties which shall be true and correct at Closing and at all times during the term of this Agreement and so long as any Obligations remaining outstanding or unsatisfied:

3.1 Good Standing/Ownership. Borrower is duly organized, validly existing and in good standing under the laws of the State of its charter or organization as provided in the opening paragraph of this Agreement, and is duly authorized to transact business in each other state or jurisdiction in which it regularly does business, and has the requisite corporate, company or partnership power and authority, as applicable, to own its property and to carry on its business in each jurisdiction in which it regularly does business.

3.2 Authority and Compliance. (a) Each Obligor has full power and authority to execute and deliver this Agreement and the Loan Documents and to incur and perform the Obligations provided for herein and therein, all of which have been duly authorized by any and all proper and necessary corporate, company or partnership action, as applicable, of such Obligor; (b) each Obligor is in compliance with all laws and regulatory requirements to which it is subject; and (c) no consent or approval of any public authority or other third party is required as a condition to the validity of any of the Loan Documents with respect to any Obligor.

3.3 Binding Agreement. This Agreement and the other Loan Documents executed by each Obligor constitute valid and legally binding obligations of each such Obligor enforceable in accordance with their terms.

3.4 Litigation. Except as set forth on Schedule 3.4, there is no proceeding involving any Obligor pending or, to the knowledge of such Obligor, threatened, before any court or Governmental Authority, agency or arbitration authority.

3.5 No Conflicting Agreements. There is no charter, bylaw, operating agreement, stock provision, partnership agreement or other document, instrument or agreement pertaining to the organization, power, or authority of each Obligor, nor a provision of any existing material agreement, mortgage, indenture or contract binding on each Obligor or affecting such Obligor's properties, which would conflict with or in any way prevent the execution, delivery, or carrying out of the terms of this Agreement and the other Loan Documents.

3.6 Ownership of Assets. Each Obligor has good title to its assets, including, without limitation, the Collateral, and such assets are free and clear of all judgments, liens, and encumbrances, except for the Permitted Liens.

3.7 Taxes. All taxes and assessments due and payable by any Obligor have been paid or are being contested in good faith by appropriate proceedings, and each Obligor has filed all tax returns which it is required to file.

3.8 Environmental Matters. Except as may be otherwise disclosed to and acknowledged by Lender in writing prior to Closing and otherwise as would not reasonably be



expected to cause a Material Adverse Change, any real property owned or leased by Borrower, including, without limitation, the Real Property Collateral (collectively, the “Subject Property”), (i) has never been and is not now being used in violation of Environmental Laws; (ii) there are no proceedings that have been commenced against such Obligor concerning any alleged violations of any Environmental Laws on or related to the Subject Property, nor does such Obligor have any reason to know of any; (iii) the Subject Property is free of any Substances and is not being used for the storage, treatment or disposal of any Substances, or if there are any Substances on the Real Property, such Obligor is maintaining them in accordance with all applicable laws; (iv) if such Obligor is transporting any Substances, such transportation is being conducted in compliance with all applicable laws; and (v) such Obligor has all required permits for the use and discharge of any Substances on the Real Property and all uses and discharges on such Subject Property are being made in compliance with such permits.

3.9 Compliance with Laws. Except as otherwise disclosed to and acknowledged by Lender prior to Closing, each Obligor is in material compliance with all federal, state, and local laws, regulations and governmental requirements applicable to it or to any of its property, business operations, employees, and transactions (including, but not limited to, any, Environmental Laws, OSHA, ERISA, Pension Benefit Guaranty Board, and laws regulating wetlands).

3.10 Accurate Financial Information and Periodic Reports. The financial information and other reports, including, without limitation, those periodic reports described on Schedule 4.1(b), furnished to Lender by each Obligor are complete and accurate in all material respects and will be complete and accurate in all mutual respects, and disclose, without limitation, any and all direct and contingent liabilities of such Obligor, and accurately reflect the matters addressed therein, including, without limitation, that no change has occurred in the financial condition of such Obligor since such information was furnished that would cause a Material Adverse Change with respect to such Obligor.

3.11 Solvency. (i) Each Obligor is Solvent, and the incursion of the Loan, the pledge of the Collateral and the execution and performance of the Loan Documents will not cause any Obligor to no longer be Solvent; (ii) each Obligor has made adequate provision for the payment of all of its creditors; and (iii) no Obligor has entered into any transaction contemplated in this Agreement or any other Loan Document to provide preferential treatment to Lender or any other creditor of such Obligor in anticipation of seeking relief under federal or state bankruptcy or insolvency laws.

3.12 ERISA. Except as otherwise disclosed to Lender in writing: (i) no employee benefit plan established or maintained, or to which contributions have been made, by Borrower, which is subject to Part 3 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), has an “accumulated funding deficiency” (as such term is defined in Section 302 of ERISA) as of the date hereof, or would have had such an accumulated funding deficiency on such day if such year were the first year of such plan to which such Part 3 applied; (ii) no “Prohibited Transaction” or “Reportable Event”, as defined under ERISA, occurred with respect to such employee benefit plan as of the date hereof; (iii) no material

liability to the Pension Benefit Guaranty Corporation has been incurred with respect to any such plan; (iv) each such employee benefit plan (if any exists) complies and will comply fully with all applicable requirements of ERISA and of the Internal Revenue Code of 1986 as amended (“Internal Revenue Code”) and with all applicable rulings and regulations issued under the provisions of ERISA and the Internal Revenue Code; and (v) this Agreement and the consummation of the transactions contemplated herein will not involve any prohibited transaction within the scope of ERISA or Section 4975 of the Internal Revenue Code.

3.13 Ownership Structure and Subsidiaries. The ownership structure of Borrower is listed on Schedule 3.13 hereof.

3.14 Place of Business, Charter State and Residence. (a) The Dixie Group, Inc.’s chief executive office and principal place of business is located at 475 Reed Road, Dalton, GA 30722 and its state of incorporation is Tennessee; and (b) TDG Operation, LLC’s chief executive office and principal place of business is located at 475 Reed Road, Dalton, GA 30722 and its state of organization is Georgia.

3.15 Location of Personal Property Collateral and Records. All tangible Personal Property Collateral, including, without limitation, any Equipment, and any records, documents or instruments relating to such Collateral, are located only at such locations as listed in Schedule 3.15 hereof.

3.16 [Reserved]

3.17 Labor Relations. Neither Obligor is a party to any collective bargaining agreement, except for the union agreement at its plant in Atmore, Alabama previously disclosed to Lender, and there are no material grievances, disputes or controversies with any union or any other organization of such Obligor’s employees, or threats of strikes, work stoppages or any asserted pending demands for collective bargaining by any union or organization.

3.18 Trade Relations. There exists no actual or threatened termination, cancellation or limitation of, or any modification or change in, the business relationship between either Obligor and any customer or any group of customers whose purchases individually or in the aggregate are material to the business of such Obligor, or with any material supplier, franchisor or franchisee of any such Obligor and there exists no present condition or state of facts or circumstances which would materially affect or prevent any such Obligor from conducting its business after the consummation of the transactions contemplated by this Agreement in substantially the same manner in which it has heretofore been conducted.

3.19 Name; No Merger. Except as provided in Schedule 3.19, (a) neither Obligor has changed its name or been known by any other name within the last five (5) years; (b) no Obligor uses or has ever used any trade or fictitious name in the conduct of its business except as identified as a “d/b/a” in the caption of this Agreement; each such Obligor is the sole owner of all such names listed in the caption of this Agreement; and any and all business done, and all invoices issued, in such names are such Obligor’s sales, business and invoices; (c) any trade name of any Obligor permitted under (b) above, if any, represents a division or trading style of

such Obligor and not a separate Subsidiary or Affiliate or independent entity; and (d) no Obligor has been the surviving entity in a merger effected within the last five (5) years.

3.20 Partnerships; Contingent Liabilities. Except as indicated in the Financial Statements of Borrower delivered to Lender prior to Closing, neither Borrower are a partner or joint venturer with any other Person or a participant in any business enterprise for which it is generally liable, nor does either Borrower have any contingent liabilities of any description except for Permitted Indebtedness and as otherwise expressly disclosed in this Agreement.

3.21 Regulation U. No proceeds from the Loan shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock in violation of the provisions of Regulation U of the Board of Governors of the Federal Reserve System.

3.22 Commercial Loan. The Loan is not a “consumer transaction”, as defined in the Code or any other applicable law, rule or regulation, and none of the Collateral has been, is currently or will be future purchased or held primarily for personal, family or household purposes.

3.23 Racketeering. No Obligor is engaged in any activity that might constitute a pattern of racketeering activity or in any other conduct that might subject all or a material portion of such Obligor’s assets to forfeiture.

3.24 Equal Opportunity and ADA. (a) *Equal Opportunity*. For all construction contracts in excess of \$10,000, the Borrower will ensure that the General Contractor complies with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). (b) *Americans with Disabilities Act (ADA)*: If the construction of or addition to the Project accommodates the public and is a commercial facility, as defined by the ADA, the Project will comply with the ADA.

#### **4. Covenants of Parties.**

4.1 Affirmative Covenants. During the term of this Agreement and so long as any Obligations remaining outstanding or unsatisfied, each Obligor covenants and agrees as follows:

4.1(a) Continuation of Pre-Closing Conditions, Representations and Warranties. All conditions precedent to the making of the Loan shall remain satisfied at all times in all material respects during the term of this Agreement, and all representations and warranties made by each Obligor in the Loan Documents shall be deemed to be made at all times during the term of this Agreement.

4.1(b) Financial Statements and Periodic Reports. Each Obligor, as noted, shall furnish or cause to be furnished to Lender such information reports and financial statements as identified on Schedule 4.1(b) attached hereto and made a part hereof, on the dates set forth therein or on a more frequent basis if reasonably requested by Lender.

4.1(c) Insurance. In addition to any other insurance requirements under any other Loan Documents: (i) each Obligor shall maintain with financially sound and reputable insurance companies insurance of the kinds, covering the risks, and in the amounts reasonably comparable to those usually carried by similar entities and individuals and sufficient to avoid the application of any co-insurance provisions, such insurance shall include, but not be limited to, liability insurance, flood insurance (to the extent required by Federal law or regulation including, without limitation, the Flood Disaster Protection Act of 1973), comprehensive hazard/casualty insurance on buildings, business theft (fidelity bond), contents and equipment and such coverage on the Collateral in amounts satisfactory to Lender; and (ii) Borrower shall exhibit or deliver certificates of such policies of insurance to Lender and provide appropriate clauses in the insurance policies indicating Lender's status as co-insured mortgagee, additional insured, or lender loss payee, as applicable, as to the Collateral, as its interest may appear; PROVIDED, FURTHER, that Borrower hereby assigns to Lender the right, and further designates Lender as its lawful attorney-in-fact, to collect and receive any indemnity payment otherwise owed to such Obligor under any policy of insurance, regardless of whether Lender is named in such policy as a person entitled to collect upon the same.

4.1(d) Audits, Inspections and Appraisals. (i) Each Obligor shall permit the Lender's officers or other representatives to visit and inspect during business hours any of the locations of any Obligor, the Project or the location of any Collateral (provided that, while an Event of Default exists, Lender may make such visits and inspections at any time without prior notice) to examine and audit all of such Obligor's Collateral, books of account, financial statements and ledgers, digital and printed records, contracts, reports, writings, Certificates of Title and other documents, papers and statements, to make copies and extracts therefrom and to discuss its affairs, finances and accounts with its officers, employees and independent accountants; and (ii) Lender may, on the occurrence of an Event of Default and at Borrower's sole cost and expense, require appraisals for all or some portion of the Collateral at any time, and such appraisals shall be done by an appraiser reasonably acceptable to Lender and shall be in form, substance and amount satisfactory to Lender; (iii) each Obligor, as applicable, assigns to Lender all right, title and interest of such Obligor in and to any leases or other agreements between any such Obligor and various persons having in their possession any or all of the Collateral, and such persons may rely upon this Agreement or a copy hereof as authority of Lender for entry upon said premises to the same extent and for the same purpose as such Obligor may enter thereupon; and (iv) the results of any of foregoing examinations, audits, appraisals, inspections and evaluations described in Subsections (i), (ii) and (iii) of this Section, and any reports produced in connection therewith, shall remain the sole and exclusive property of Lender, and no Obligor shall be entitled to inspect or review same; PROVIDED, HOWEVER, that each such Obligor agrees to remain bound to the party having possession of the Collateral for the performance of all obligations with respect to such Collateral, and the entry of Lender under the terms of this Agreement upon such premises shall not constitute an acceptance by Lender of any obligation of any such Obligor to any person having possession of such Collateral.

4.1(e) Maintenance, Remediation and Notification of Environmental Claims. Borrower shall: (i) maintain any Substances brought upon the Real Property Collateral in accordance with all applicable laws and promptly take all action that is needed to abate any

material environmental risk or comply with any Environmental Laws on or related to the Real Property Collateral at its sole expense, subject to such legal and/or equitable defenses available to Borrower; (ii) promptly, upon Borrower having actual knowledge thereof, inform Lender in writing of any environmental risk or violation of any Environmental Laws on or related to the Real Property Collateral or the commencement of any proceeding against it or receipt of any notices by it concerning any alleged violation of Environmental Laws on or related to the Real Property and which would likely result in a Material Adverse Change; (iii) at Lender's reasonable request or where notice to Lender is required under Subsection (v) hereof, obtain additional environmental audits covering any Real Property Collateral from experts reasonably acceptable to Lender; (iv) permit Lender, or any person or firm designated by Lender, to inspect the Real Property Collateral on reasonable notice, not less than two (2) business days, and during normal business hours; and (v) upon Borrower having actual knowledge thereof, immediately notify Lender in writing of: (A) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to any applicable federal, state, or local laws, ordinances or regulations relating to any Substances affecting its business operations; and (B) all claims made or threatened by any third party against it relating to damages, contributions, cost recovery, compensation, loss or injury resulting from any Substances and which would likely result in a Material Adverse Change.

4.1(f) Environmental Indemnity. Borrower shall comply with all of the terms, provisions and indemnifications set forth in the Environmental Indemnity Agreement.

4.1(g) Purpose of Loan. Borrower shall use the proceeds of the Loan only for the purpose or purposes represented to Lender in Section 2.5.

4.1(h) Notice of Litigation. Borrower shall promptly, and in any event, no later than ten (10) days after being served or otherwise receiving notice, notify Lender in the event that any legal action is filed against such Obligor, excepting workers' compensation claims and matters for which the damages sought are less than Five Million and No/100 Dollars (\$5,000,000.00) ("Litigation Threshold") in the aggregate.

4.1(i) Free of Liens. Borrower shall maintain, at all times, the Collateral free of any Lien or encumbrance other than Permitted Liens.

4.1(j) Compliance with Laws. Borrower shall comply with all applicable federal, state, and local laws and regulations including, but not limited to, consumer protection laws, Food Safety Laws, Environmental Laws, OSHA, ERISA, and the Pension Benefit Guaranty Board.

4.1(k) Payment of Obligations. Borrower shall duly and punctually pay all Obligations, including, without limitation, principal and interest on the Note, and each Obligor shall duly and punctually pay all other Indebtedness of such Obligor to any other Person other than Lender, it being understood, however, that this Section shall not be deemed to permit any Indebtedness other than Permitted Indebtedness.

4.1(l) Maintenance of Properties. Borrower shall: (i) keep all its properties, including, without limitation, the Collateral, in good repair and in good working order and condition, reasonable wear and tear excepted, and from time to time make all needed and proper repairs, renewals, replacements, additions, and improvements thereto; (ii) comply with the provisions of all leases to which it is a party or under which it occupies property so as to prevent any loss or forfeiture thereof or thereunder; and (iii) preserve and maintain all licenses, trademarks, privileges, permits, franchises, certificates and the like necessary for the operation of the Personal Property Collateral at its intended capacity.

4.1(m) Notice to Lender. Borrower shall immediately notify Lender: (i) on the occurrence of any Event of Default; (ii) of any fact, condition or event, that would be giving of notice or passage of time, or both, could become an Event of Default; (iii) of any event causing a material loss or depreciation in the value of the Collateral and the amount of such loss or depreciation; (iv) on the failure of any Obligor to observe its undertakings hereunder; (v) on the occurrence of a Material Adverse Change with respect to any Obligor.

4.1(n) Landlord and Storage Agreements. Borrower shall provide Lender with copies of all agreements between Borrower and any landlord, custodian or warehouseman which owns any premises at which any Collateral may reside, from time to time and shall promptly deliver to Lender any warehouse receipts, if applicable, and obtain lien waivers and subordinations as Lender may require covering any of the Collateral.

4.1(o) [Reserved]

4.1(p) Qualified in Nevada. TDG is duly qualified to transact business in the State of Nevada as a foreign limited liability company, and will remain duly qualified to transact business in the State of Nevada for the term of the Loan.

4.1(q) Continuing Guaranty. If Borrower acquires, forms or purchases any other entity, such entity shall, without any further action by the Parties, unconditionally guarantee the repayment of all of the Obligations and waive any right to notice or demand and shall further execute and deliver to Lender an unlimited and continuing guaranty evidencing same; it being understood, however, that this Section shall not be deemed to permit any mergers or acquisitions or creation of any Subsidiary in violation of the provisions of this Agreement.

4.1(r) Equipment Covered by Certificates of Title. If any Collateral is subject to or covered by any Certificate of Title statute, Borrower shall note Lender's security interest thereon, and, on Lender's request, promptly deliver each original copy of any such Certificate of Title covering such Collateral to Lender, or its designee, to be held until satisfaction in full of all of the Obligations, and Borrower shall take any steps necessary to perfect Lender's security interest in such Collateral and shall further authorize Lender to do the same; PROVIDED, FURTHER, that Borrower shall not apply for any replacement Certificate of Title regarding any Collateral nor take any other steps or actions that may otherwise impair Lender's security interest in the same.

4.1(s) Commercial Tort Claims. Borrower shall promptly notify Lender should Borrower obtain any “Commercial Tort Claim” (as defined in the Code) relative to any of the Collateral and take such steps as shall be requested by Lender to further evidence and perfect Lender’s security interest in the same.

4.1(t) [Reserved]

4.1(u) [Reserved]

4.1(v) Continuing Enforceability Covenants.

(i) Continuing Enforceability of Loan Documents. The terms and conditions of each presently existing Loan Document shall remain in full force and effect and the transactions contemplated in this Agreement and the other Loan Documents executed concurrently herewith shall not be construed as a novation, waiver or release of the repayment or performance of any indebtedness, obligation or liability of any Obligor arising under any Loan Document, as such may have been modified, amended, restated and renewed from time to time.

(ii) Continuing Priority of Liens and Security Interests. Each Obligor acknowledges and agrees that this Agreement, together with any transactions contemplated herein or occurring contemporaneously herewith, shall not disturb the existing priority of any Loan Document, or any lien or security interest in favor of Lender granted or created thereunder, and any such Loan Document, lien or security interest shall retain the same priority and effective date as originally provided in any such Loan Document.

(iii) Cross-Collateralization of the Loan. Each Obligor hereby acknowledges and agrees that the repayment of the Note, whether presently outstanding, executed concurrently herewith or arising at any time hereafter, together with the repayment and performance of any and all other indebtedness, obligations and liabilities of Borrower to Lender, including, without limitation, the Obligations, arising under any Loan Document or any other agreement, document or instrument executed in favor of Lender, shall be secured with equal force and effect by the Collateral, as may be modified from time to time, and any and all security documents, instruments and agreements executed with respect thereto, whether or not any such indebtedness, obligation or liability is specifically referenced or identified in any such document, instrument or agreement.

(iv) [Reserved]

(v) Release of Claims. Each Obligor acknowledges and agrees that no Obligor has any claim, defense, claim of offset or cause of action of any nature against Lender, its successors, assigns, representatives or officers, which would or will impair, reduce or diminish such Obligor’s liability to Lender under the Loan and any other Loan Documents or otherwise subject Lender, its successors, assigns, representatives or officers, to any direct or indirect liability, including, without limitation, any claim based on any act or omission of Lender or any officer, agent or representative of Lender related to the Loan or the administration of the Loan or any claim arising by reason or on account of or related directly or indirectly to any

contractual relationship or transaction between any Obligor and Lender, its successors, assigns, agents, representatives or officers; PROVIDED, FURTHER, THAT, TO THE EXTENT THAT ANY SUCH CLAIM, DEFENSE, CLAIM OF OFFSET OR CAUSE OF ACTION OF ANY NATURE EXISTS AS OF THE DATE HEREOF, THEY ARE HEREBY WAIVED, RELEASED AND DISCHARGED BY EACH OBLIGOR AS AGAINST LENDER, ITS SUCCESSORS, ASSIGNS, REPRESENTATIVES AND OFFICERS.

4.1(w) USDA Guarantee Requirements. So long as any of the Obligations covered by any USDA Guarantee remains outstanding, each Obligor shall comply with all requirements, terms and conditions set forth therein and under the USDA Conditional Commitment, and each Obligor hereby acknowledges and agrees that it has received, read and understands the terms and conditions thereof. In the event of any inconsistency between the terms, conditions and requirements of the USDA Conditional Commitment and this Agreement or any other Loan Document the terms of USDA Conditional Commitment shall control, provided that any provision of any Loan Document which imposes additional obligations upon any Obligor or provides additional rights or remedies to Lender shall be deemed to be supplemental to, and not inconsistent with, the USDA Conditional Commitment and provided, further, that any pre-condition, continuing obligation or requirement applicable to Lender in favor of the USDA under the USDA Conditional Commitment shall be construed to be an obligation and requirement of each Obligor and a condition precedent to Lender's obligations hereunder, all at Borrower's sole cost and expense. Additionally, USDA concurrence is required for any servicing action in accordance with regulations at 7 CFR 4279 subpart C, 7 CFR part 4287 subpart D, and servicing requirements identified in Form RD 4279-4, "Lender's Agreement" will apply once the USDA RD Form 4279-5 Loan Note Guarantee is issued.

4.2 Negative Covenants. During the term of this Agreement and so long as any Obligations remaining outstanding or unsatisfied, each Obligor, as noted, further covenants and agrees as follows:

4.2 (a) Merger/Changes. Borrower shall not: (i) enter into any merger, reorganization or consolidation; (ii) make any substantial change in the basic type of business now conducted by it; (iii) undergo any Change of Control; or (iv) change or otherwise modify its accounting methods, practices or fiscal reporting period for accounting or tax purposes, in each case without the prior consent of the Lender.

4.2 (b) Name; Location of Collateral. No Obligor shall without the prior written approval from Lender: (i) change the locations at which the Collateral or any books, records, contracts, writings, documents of title, or other documents, agreements or instruments related thereto are located, stored or maintained, (ii) adopt or make use of any fictitious or trade name not disclosed elsewhere in this Agreement; or (iii) change its name, identity or corporate structure or its state of charter or organization.

4.2 (c) Judgments, etc. No Obligor shall allow any judgment or judgments for the payment of money in excess of the aggregate sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "Judgment Threshold"), excluding amounts with respect to which an insurance carrier admits full coverage (except for applicable deductibles), to remain



undischarged, un-vacated, un-bonded in full or un-stayed for a period of sixty (60) days, unless execution thereof is stayed by a court of competent jurisdiction.

4.2 (d) Sale of Collateral. Borrower shall not sell, transfer, assign, lease, pledge, abandon or otherwise dispose of any of the Collateral or any interest therein, without prior consent of the Lender and USDA (as may be required), except for machinery or equipment which has become obsolete and for which suitable replacement equipment, of equal value or usage, shall have been procured which becomes Collateral for the Loan.

4.2 (e) Loan to and from Members, Stockholders, Affiliates and Others. Except for Permitted Indebtedness, Borrower shall not make any Loan, advances, extensions of credit to, or guaranty, co-sign or become surety for, any other Person, including, without limitation, loans or advances to Affiliates. Loans/advances to stockholders, partners, members, owners, officers, or other Affiliates are prohibited. Except as provided herein, loans from stockholders, owners, officers or Affiliates must be subordinated to the Loan or converted to stock or partnership interests, and no payments are to be made on these debts unless (i) the Loan is current and in good standing and (ii) Lender consents to such payment. (iii) the payment will not cause Borrower to be in non-compliance with any of the financial and other covenants under this Loan Agreement or result in the occurrence of an Event of Default, and (iv) Lender has given its prior consent to such payments.

4.2 (f) Indebtedness/Guarantees. Borrower shall not create, incur, assume or suffer to exist any Indebtedness or obligation for money borrowed, or guarantee, endorse, or otherwise be or become contingently liable on any debt or obligations to any Person without first obtaining the written consent of Lender, except for the following ("Permitted Indebtedness") (i) the Indebtedness as set forth on Schedule 4.2(f) attached hereto and incorporated herein by reference and (ii) in addition to any other Indebtedness permitted under this Section, obligations to any Person (including, without limitation, to any Affiliate) other than the Lender not exceeding Five Million and 00/100 Dollars (\$5,000,000.00) in any calendar year; and

4.2 (g) Liens and Security Interests. Borrower shall not create, incur, assume, or suffer to exist any mortgage, security deed, mortgage, security interest, pledge, encumbrance, Lien or charge of any kind (including charges on property purchased under conditional sales or other title-retention agreements) on the Collateral, now owned or hereafter acquired, except for (collectively, "Permitted Liens") (i) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings and against which reserves deemed adequate by Lender have been set up (excluding any Lien imposed pursuant to any of the provisions of ERISA); (ii) Liens arising in the ordinary course of business (such as (A) Liens of carriers, warehousemen, mechanics and materialmen and other similar liens imposed by applicable Law and (B) Liens in the form of deposits or pledges incurred in connection with worker's compensation, unemployment compensation and other types of governmentally imposed social security (excluding Liens arising under ERISA) or in connection with surety bonds, bids, performance bonds and similar obligations for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any advances or borrowed money or the deferred purchase price of property or services and, in each case, for which Borrower maintain adequate

reserves in accordance with GAAP and the execution or other enforcement of which is effectively stayed; (iii) subject to the limitation set forth in Section 4.2(f), Liens arising in connection with capital leases or operating leases (and attaching only to the property being leased) or Liens that constitute purchase money security interests on any property securing permitted debt incurred for the purpose of financing all or any part of the cost of acquiring such property, provided that any such purchase money security interest attaches to such property within twenty (20) days after the acquisition of such property and attaches solely to the property so acquired; (v) Liens arising under the Loan Documents; and (vi) (a) easements, rights of way, zoning ordinances and other similar encumbrances affecting the Real Property Collateral that do not create a Material Adverse Change on the value or use of the Real Property Collateral or in the operations as expected to be operated thereon and (b) liens on the Real Property Collateral to secure Borrower's loan from AmeriState Bank in the principal amount of \$10,000,000 dated October 26, 2020 ((a) and (b) collectively, "Permitted Real Estate Encumbrances"), provided however, that Borrower shall obtain the subordination of any easement or right of way referred to in (vi)(a) to Lender's Mortgage upon request of Lender.

4.2 (h) Affiliate Transactions. Borrower shall not purchase, finance the purchase of, acquire or lease property from, or sell, transfer or lease any assets or property to, any Affiliate of Borrower except in the ordinary course of Borrower's business, under terms and conditions equivalent to or better than the terms and conditions which would apply if disinterested parties were involved and otherwise in accordance with the Loan Documents.

4.2 (i) Security Instruments and Financing Statements. Borrower shall not permit any financing statement, mortgage, mortgage, deed to secure debt or other security instrument, filing or document, excepting filings related to Permitted Liens, to be on file with respect to any of the Collateral.

4.2 (j) Acquisitions. Borrower shall not purchase or acquire the obligations, assets, equity, stock or any other interest of any Person, except direct obligations of the United States of America or certificates of deposit or other investments issued by Lender (if offered) and except for up to an annual aggregate of \$5,000,000 for fixed assets, without the prior consent of Lender.

4.2 (k) Restrictions of Distributions and Compensation.

(i) Compensation of officers and directors will be limited to an amount that, when taken, will not adversely affect the repayment ability of the Borrowers. This amount shall be set annually by shareholder vote on the Borrower's annual compensation plan.

(ii) Dividend payments will be limited to an amount that, when taken, will not adversely affect the ability of the Borrowers to pay all Obligations when due. No dividend payments will be made unless (1) an after-tax profit was made in the preceding fiscal year, (2) the Borrower is and will remain in compliance with covenants of this Loan Agreement and the Conditional Commitment, and (3) all Borrower Obligations are paid to a current status. This is not intended to apply to dividend payments to cover personal tax liability resulting from profitability of Borrower's ordinary business.

4.2 (l) Lease Transactions. Borrower shall not enter into any sale and lease-back arrangement on any of the Collateral, either directly or indirectly, without the prior consent of Lender which shall not be unreasonably withheld or delayed.

4.2 (m) Amendments. Borrower shall not amend any instrument evidencing a Permitted Lien or the indebtedness secured thereby.

4.2 (n) [Reserved]

4.2 (o) Adverse Transactions. Obligors shall not enter into any transaction, or permit any Subsidiary to enter into any transaction, which does or may materially and adversely affect the Collateral or Borrower's ability to repay the Obligations.

4.2 (p) Subsidiary Divestiture. No Obligor shall transfer, sell, pledge, encumber or otherwise assign any shares of stock or other interest in any Subsidiary or permit any Subsidiary to sell or otherwise dispose of substantially all of its assets without the prior written consent of Lender.

4.2 (q) Partnerships or Joint Ventures. Other than those existing and disclosed to Lender in writing before the Closing Date, Borrower shall not become or agree to become a general or limited partner in any general or limited partnership or party to any joint venture.

4.2 (r) Capital Expenditures. The Borrower will not invest in additional fixed asset purchases (in addition to the fixed assets financed by the Lender) in excess of \$5,000,000 in an annual aggregate amount, without Lender approval. The Borrower will not lease, sell, transfer, or otherwise encumber equipment or fixed assets without the concurrence of the Lender (except for replacement of equipment the ordinary course of business). The disposition of fixed assets included as Collateral for the Loan must have the prior concurrence of Lender and the USDA.

4.2 (s) [Reserved]

4.2(t) Sale of Business. Borrower shall not enter into any binding agreement for the sale of its business or a material portion thereof, or sell its business or a material portion thereof, without first obtaining the written concurrence of Lender, which will not be unreasonably withheld.

4.3 Financial Covenants. During the term of this Agreement and so long as any Obligations remaining outstanding or unsatisfied, Borrower shall at all times maintain the following (collectively, the "Financial Covenants"):

4.3 (a) Maximum Debt to Net Worth. Borrower shall maintain a ratio of (i) Indebtedness to (ii) Tangible Net Worth of less than 9.0 to 1.0 measured annually, beginning at the end of the second year after Closing for the term of the Loan, and based on year-end CPA-audited financial statements;

4.3 (b) Debt Service Coverage Ratio: Borrower's Debt Service Coverage Ratio shall not fall below 1.20 to 1.00 beginning the second full year of operations of the Project, to be measured as of the last day of each fiscal year beginning fiscal year end 2021, annually for the term of the Loan and based on year-end CPA-reviewed financial statements. "Debt Service Coverage Ratio" shall be measured by EBITDA divided by aggregate annualized business debt service.

4.3 (c) Current Ratio: Borrower will at all times maintain a Current Ratio of not less than 1:1, with "Current Ratio" being the ratio of Current Assets to Current Liabilities.

4.3 (d) Global Definitions. For purposes of this Section 4.3, unless otherwise defined, capitalized terms shall be as defined or determined under GAAP.

4.3 (e) Testing Frequency and Calculations. The Financial Covenants shall be tested annually and calculated based upon the Financial Statements of the Borrower, prepared and delivered to Lender in accordance with Schedule 4.1(b).

4.3 (f) Other Conditions. Unless otherwise agreed to by Lender in writing or as otherwise set forth in this Section 4.3, Borrower's compliance with the Financial Covenants shall be determined after eliminations for Intercompany Transactions and reported on the Financial Statements and Covenant Compliance Certificate prepared in accordance with Schedule 4.1(b).

4.4 [Reserved]

4.5 Accelerating Transfers

4.5 (a) "Accelerating Transfer" means (i) any sale, contract to sell, conveyance, encumbrance, or other transfer, whether voluntary, involuntary, by operation of law or otherwise, of all or any material part of the Property or any interest in it or (ii) a Change in Control occurs, in each case without Borrower providing Lender with at least thirty (30) days written notice thereof and Lender providing its written consent to such action in its sole and absolute discretion.

4.5 (b) Borrower agrees that Borrower shall not make any Accelerating Transfer, unless the transfer is preceded by Lender's express written consent to the particular transaction and transferee. Lender may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Lender in its sole discretion may declare all of the Loan to be immediately due and payable, and Lender may invoke any rights and remedies provided by Section 7 of this Agreement.

## **5. Security Agreement and Collateral for the Loan.**

5.1 Security Agreement and Collateral. In addition to the pledges and liens set forth in, or created by, the Security Agreement, the Mortgage and under or in accordance with the other terms of this Loan Agreement, Borrower pledges and assigns to Lender the following property as collateral security for the repayment and performance of all or some portion of the

Obligations and other covenants and agreements herein and in the other Loan Documents, as herein provided:

5.1 (a) Personal Property Collateral. Borrower hereby grants to Lender a first-priority perfected security interest in the following types of property, rights and interests (with all capitalized terms as defined in the Code) as collateral security for the repayment, satisfaction and performance in full of all of the Obligations and to secure Borrower's performance of and compliance with each and every covenant, agreement, representation, warranty and indemnity under this Agreement and under each and every other Loan Document (collectively, the "Personal Property Collateral"):

(i) All Machinery and Equipment more specifically described in the "Security Agreement" between Borrower and Lender dated evenly herewith; and

(ii) All of the foregoing whether now owned or hereafter acquired and wherever located, together with any proceeds thereof, and any appurtenances, accessions and other rights, claims or benefits arising from or pertaining thereto, including, but not limited to, any claims to any of the foregoing property, and any claims Borrower has against any third parties, for the damage to or destruction of any or all portions of such property and or for proceeds payable under, or unearned premiums with respect to, policies of insurance.

5.1 (b) Real Property Collateral. As collateral security for the repayment, satisfaction and performance in full of all of the Obligations and to secure Borrower's performance of and compliance with each and every covenant, agreement, representation, warranty and indemnity under this Agreement and under each and every other Loan Document, pursuant to the Mortgages the Borrower grants to Lender a Lien on the Real Property Collateral, including the land, structures, improvements and fixtures, and in and to all leases, all as more particularly described in Schedule 5.1 subject only to the Permitted Liens.

## 5.2 [Reserved]

5.3 Additional Security Covenants. Borrower agrees to execute and deliver to Lender at Closing and at any time thereafter so long as any Obligations remain outstanding, any security documents, instruments or other agreements as reasonably requested by Lender and related to the Collateral, or any portion thereof, and further authorizes Lender to file any such documents, instruments or other agreements, or other proper notice of Lender's security interest, and any continuation statements or amendments thereto, with any filing authority that Lender deems appropriate. PROVIDED, FURTHER, that each Obligor agrees that to the extent accepted by the applicable filing authority, a carbon, photographic or other reproduction of this Agreement, or any memorandum thereof, with respect to the Collateral shall be sufficient as a financing statement and may be filed as such by Lender, and that Lender may execute any financing statement filed pursuant to this Section either in its own name or in that of any applicable Obligor.

5.4 Term. Notwithstanding anything set forth herein to the contrary, Lender's security interests in the Collateral as provided in this Section 5 and as otherwise provided in this Loan Agreement, the Note and the other Loan Documents, shall continue for as long as any Obligor is indebted to Lender or other person pursuant to this Loan Agreement, the Note or other Loan Documents.

**6. Events of Default.** The occurrence of any of the following shall constitute an event of default (each an "Event of Default"):

6.1 Payment. Any payment of principal, interest, or other sum owed to Lender under the Note, under this Loan Agreement or under any of the other Loan Documents, or otherwise due from any Obligor to Lender, is not when due and such delinquency has not been cured within fifteen (15) days, whether scheduled payments, at stated maturity, upon acceleration, or otherwise.

6.2 Additional Defaults. (i) Any provision or covenant of any Loan Document is breached; or (ii) any warranty, representation, or statement made or furnished to Lender by any Obligor in writing in connection with the Loan and the Loan Documents, including any warranty, representation, or statement included in any Obligor's Periodic Reports under Schedule 4.1(b), or to induce Lender to make or continue to make the Loan, is or becomes untrue or misleading in any material respect or (iii) any default or Event of Default under any of the Loan Documents occurs that, in the case of each of clauses (i), (ii) and (iii) is not cured within the applicable cure period described in Section 7.1 below, if any;

6.3 Cross-Default. (i) A default under one or more other Obligations of Lender to Borrower which is not cured within any applicable cure period shall be an Event of Default hereunder; (ii) any default by Borrower that occurs under any other agreement with Lender other than the Loan Documents, whether now existing or hereafter arising, including, without limitation, a default under any agreement that evidences any Indebtedness, other than the Loan, owed by Borrower to Lender; or (iii) any default under any loan, credit or financing agreement by Borrower, whether now existing or hereafter arising, which is not cured within the applicable cure period, if any;

6.4 Dissolution, Insolvency or Bankruptcy. (i) The dissolution, termination of existence, liquidation or insolvency of Borrower; (ii) the appointment of a receiver, custodian, trustee, executor, administrator, successor, personal representative, special administrator, guardian, attorney-in-fact, trustee, committee, conservator, or other fiduciary or agent over any part of the property of Borrower; (iii) any assignment for the benefit of creditors of Borrower; (iv) commencement of any proceeding by Borrower under state or federal bankruptcy laws or other insolvency laws; (v) the commencement of any involuntary proceeding against Borrower under state or federal bankruptcy laws or other insolvency laws, which is not dismissed within sixty (60) days after such commencement; or (vi) any merger, consolidation or sale of Borrower's other than as permitted hereunder;

6.5 Material Adverse Changes. Any Material Adverse Change occurs that materially adversely affects the ability of any Obligor to meet its obligations under this Loan Agreement, the Note or the other Loan Documents;

6.6 Uninsured Losses; Unauthorized Dispositions. Any material loss, theft, damage or destruction not fully covered by insurance (as required by this Loan Agreement and subject to such deductibles as Lender shall have agreed to in writing), or sale, lease or encumbrance of any of the Collateral or the making of any levy, seizure, or attachment thereof or thereon except in all cases as may be specifically permitted by other provisions of this Agreement;

6.7 Business Disruption; Condemnation. (i) Any cessation of a substantial part of the business of any Obligor for a period which significantly affects such Obligor's capacity to continue its business, on a profitable basis such that it is reasonably likely that Borrower will not be in compliance with Financial Covenants contained herein; (ii) the loss of any permits or licenses from any Governmental Authority to operate the Project at full nameplate capacity that continues for a period of 30 days; (iii) any Obligor shall be enjoined, restrained or in any way prevented by court, governmental or administrative order from conducting all or any material part of its business affairs; (iv) any material lease or agreement pursuant to which any Obligor leases, uses or occupies any of its properties shall be canceled or terminated prior to the expiration of its stated term; or (v) any part of the Collateral shall be taken through condemnation or the value of such properties shall be impaired through condemnation;

6.8 Change in Control; Accelerating Transfers. If: (i) a Change of Control, or (ii) if an Accelerating Transfer occurs in violation of Section 4.5 hereof;

6.9 Sale of Assets. The sale or transfer of all or substantially all of Borrower's assets without the prior written consent of Lender;

6.10 First Priority, Perfected Security Interest. If for any reason (other than solely as a result of Lender's failure to timely file any mortgage reinscription and/or Code continuation statements), Lender's priority position with respect to any Collateral ceases to be a fully perfected, first-priority security interest or lien, except for Permitted Liens, either by virtue of the filing of a Code financing statement, a mortgage, security deed or other security instrument, by virtue of the operation of statute, or otherwise, or if any person shall make any filing altering or terminating any financing statement or other security instrument in favor of Lender without Lender's prior written consent which is not reinstated or resolved to Lender's satisfaction within ten (10) days of the filing thereof; or

6.11 Lender Insecurity. Lender reasonably and in good faith deems itself insecure due to a Material Adverse Change (i) in circumstances affecting the Borrower or affecting Lender's Lien on any of the Collateral or (ii) diminishing the value of the Collateral.

## **7. Lender's Remedies**

7.1 Remedies. Upon: (i) the occurrence of an Event of Default under Section 6.1 or 6.4, or (ii) the occurrence of any Event of Default, other than an Event of Default under Section

6.1 or 6.4, which shall remain uncured thirty (30) days after the occurrence thereof, or, if such default cannot be cured within thirty (30) days, remains uncured after a total of ninety (90) days where Borrower has promptly initiated and diligently pursued such cure, Lender shall, to the fullest extent permitted by law, have the following rights and remedies, such rights and remedies being cumulative, non-exclusive and exercisable by Lender in its sole and absolute discretion and in addition to those available to Lender under any other Loan Document or otherwise available at law or in equity:

7.1 (a) Acceleration. To declare the entire unpaid principal amount of the Loan, accrued interest thereon and all other Obligations to be immediately due and payable, without presentment, demand, or notice of any kind, and to terminate any advances under the Loan;

7.1 (b) Immediate Possession and Control of Collateral. To take immediate possession and control of all Collateral whether now owned or hereafter acquired, without notice, demand, presentment, or resort to legal process, and, for those purposes, to enter the Project and any other premises where any such Collateral is located and remove such Collateral therefrom or render it unusable;

7.1 (c) Assembly of Collateral. To require Borrower and other Obligor to assemble and make the Personal Property Collateral available to Lender at a place to be designated by Lender which is also reasonably convenient to Borrower;

7.1 (d) Sale of Collateral. To retain all Personal Property Collateral in full or partial satisfaction of any unpaid Obligations as provided in the Code or sell such Personal Property Collateral at public or private sale after giving at least ten (10) days' notice of the time and place of the sale in accordance with the Code, with or without having such Collateral physically present at the place of the sale;

7.1 (e) Repair and Improvements of Collateral. To make any repairs and improvements to the Collateral which Lender deems necessary or desirable for the purposes of sale;

7.1 (f) Set-off. To exercise any and all rights of set-off which Lender may have against any account, fund, or property of any kind, tangible or intangible, belonging to any Obligor which shall be in Lender's possession or under its control;

7.1 (g) Appointment of Receiver. To appoint or have so appointed a receiver, without bond, to take exclusive possession and control of the Collateral, or any portion thereof, together with any and all documents, instruments, agreements, books and records related thereto, for the purpose of preserving, improving, maintaining, and/or disposing of the Collateral, or any portion thereof, and collecting rents and proceeds arising therefrom and further exercising any such other rights and remedies as may be customary or otherwise available at law and in equity; the foregoing rights and remedies to be exercised by such receiver in its sole discretion or as otherwise directed by court order, and any and all costs, fees and expenses related thereto shall be an Obligation payable on demand;



7.1 (h) Removal of Records. To remove from the Real Property Collateral and each Obligor's premises, or any other location, all of the records described in Section 4.1(d) and keep and retain the same in Lender's possession until all of the Obligations shall have been fully paid and discharged and Lender has no further obligation under this Agreement and the other Loan Documents;

7.1 (i) Cure. To cure any Event of Default in such manner as deemed appropriate by Lender;

7.1 (j) Foreclosure. To foreclose on any Collateral pursuant to the terms of the Mortgages and any of the other Loan Document, or at law or in equity; and

7.1 (k) Law of Equity. To take any other action or remedy available under applicable law or in equity.

7.2 Proceeds. The proceeds from any disposition of all or any part of the Collateral shall be allocated by Lender as it determines in its reasonable discretion and in accordance with applicable Law.

7.3 Resort to Obligors. Lender may, at its option, pursue any and all rights and remedies directly against any and every Obligor, in the same or separate actions, at the same time or at different times, and with or without resort to any Collateral or any other Obligor.

7.4 Deficiency. To the extent the proceeds realized from the disposition of the Collateral shall fail to satisfy all of the Obligations, each Obligor, to the extent that such Obligor is also a Borrower hereunder and under the other Loan Documents, shall remain liable to pay any deficiency in the total amount owed to Lender under the Note and Loan Documents.

7.5 Advances/Reimbursements. All amounts due to Lender as a result of expenditures made by Lender or losses suffered by Lender shall bear interest at the highest default rate as provided under the Note, or as otherwise provided in this Agreement, from the date demanded until paid in full. Unless otherwise specified in the Loan Documents, such advances and other sums, together with accrued interest, shall be due and payable from Borrower upon demand.

7.6 Marshaling of Assets; Payments Set Aside. Lender shall be under no obligation to marshal any assets or securities in favor of any Obligor or any other Person, or against or in payment of any or all of the Obligations. To the extent that any sum credited against the Obligations is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Obligations or such part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

7.7 Attorney in Fact. In addition to any other rights and remedies of Lender under this Agreement and the other Loan Documents, whether available on the occurrence of an Event

Default or otherwise, on the occurrence of an Event of Default (and only for so long as such Event of Default is continuing), Borrower hereby irrevocably designates, makes, constitutes and appoints Lender (and all Persons designated by Lender) as Borrower's true and lawful attorney (and agent-in-fact) and Lender, or Lender's agent, may, without notice to Borrower and in Borrower's or Lender's name, but at the cost and expense of Borrower: (i) sell, transfer, settle, adjust, compromise, discharge or release any of the Collateral; (ii) prepare, file and sign Borrower's name to a proof of claim in bankruptcy or similar document against any Account Debtor or to any notice of lien, assignment or satisfaction of lien or similar document in connection with any of the Collateral; (iii) receive and open all mail addressed to Borrower and notify postal authorities to change the address for delivery thereof to such address as Lender may designate; (iv) endorse the name of Borrower upon any of the items of payment or proceeds relating to any Collateral and deposit the same to the account of Lender or any other Lender on account of the Obligations; (v) endorse the name of Borrower upon any chattel paper, document, instrument, invoice, freight bill, bill of lading or similar document or agreement relating to the Collateral; (vi) use the information recorded on or contained in any data processing equipment and computer hardware and software relating to the other Collateral and to which Borrower has access; (vii) for and in the name of Borrower, give instructions and direct any bank or financial institution in which proceeds of the Collateral are deposited to turn over said proceeds to Lender; and (viii) do all other acts and things necessary, in Lender's determination, to fulfill Borrower's obligations under this Agreement and the other Loan Documents.

7.8 License of Rights. In advertising for sale and in selling any Collateral, subsequent to an Event of Default, Lender is hereby granted a license or other right to use, without charge, each Obligor's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks and advertising matter or any property of a similar nature as it pertains to the Collateral and such Obligor's rights under all licenses and all franchise agreements shall inure to Lender's benefit.

## **8. Miscellaneous.**

8.1 General Indemnity. Unless resulting solely from acts or conduct of Lender constituting willful misconduct or gross negligence and in addition to any other indemnity obligations of any Obligor under this Agreement or any other Loan Document, each Obligor hereby releases and shall indemnify, defend and hold harmless Lender and its successors and assigns, and each entity which may be a current or future participant in the Loan or any portion thereof, their respective officers, employees and agents, of and from any claims, demands, liabilities, obligations, judgments, injuries, losses, damages and costs and expenses (including, without limitation, reasonable legal fees) resulting from: (a) acts or conduct of any Obligor under, pursuant or related to this Agreement and the other Loan Documents; (b) any Obligor's breach or violation of any representation, warranty, covenant or undertaking contained in this Agreement or the other Loan Documents; (c) any Obligor's failure to comply with any applicable Laws (including, without limitation, any Environmental Law, etc.); and (d) any claim by any other Obligor, or any principal, officer, agent, employee, or creditor thereof, against Lender arising out of any transaction whether hereunder or in any way related to the Loan Documents and all costs, expenses, fines, penalties or other damages resulting therefrom.

8.2 Discharge of Taxes, Obligors' Obligations, Etc. Lender, in its sole discretion, shall have the right at any time, and from time to time, with at least ten (10) calendar days prior notice to Obligor and if the applicable Obligor fails to do so, to: (a) pay for the performance of any Obligor's obligations hereunder; and (b) discharge taxes, Liens, fines or penalties at any time levied against any Obligor or Lender in connection with the Loan or placed on the Collateral, or any of it, in violation of this Agreement unless such Obligor is in good faith with due diligence by appropriate proceedings contesting such taxes or Liens and maintaining proper reserves therefor in accordance with GAAP. Such payments and advances shall: (i) be added to the Obligations; (ii) be secured with equal force and effect by the Collateral; and (iii) bear interest at the highest rate (including any default rate) applicable to the Loan, until reimbursed to Lender. Such payments and advances made by Lender shall not be construed as a waiver by Lender of a Default or Event of Default under this Agreement or any other Loan Document.

8.3 Notice. All notices, demands, or other communications given under the Loan Documents shall be in writing, and shall be sent via overnight courier or mailed to the address of each party as set forth below, said mailing to be certified United States government mail to the mailing address. Obligors must provide written direction to Lender, or Lender must provide written direction to the designated Obligor for notice hereunder in order to change the address to which said notice shall be sent. Notices shall be deemed to have been duly given, served, and delivered: (a) on the date personally delivered; (b) on the date of receipt by the addressee of any item transmitted by United States registered or certified mail (return receipt requested), postage prepaid; (c) on the date of receipt by the addressee of any item transmitted by e-mail or other commercial electronically transmitted means, or (d) on the first (1<sup>st</sup>) Business Day following the date on which delivered to a commercially-responsible overnight courier which provides service between the point of origin and the point of destination, addressed to the party which is to receive such notice at the address stated above or to such other address(es) as may be designated in writing by the other parties:

If to Lender, to: Greater Nevada Credit Union  
c/o Greater Commercial Lending  
5200 Neil Road  
Reno, NV 89502  
Attention: Commercial Services

If to any Obligor, to: The Dixie Group, Inc.,  
c/o TDG Operation, LLC  
475 Reed Road  
Dalton, GA 30722  
Attention: Jon Faulkner

8.4 Waiver. No failure or delay on the part of Lender in exercising any power or right hereunder, and no failure of Lender to give any Obligor any notice of an Event of Default, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power

preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of any Loan Document or consent to any departure by any Obligor from any Loan Document shall in any event be effective unless the same shall be in writing and signed by Lender, and such waiver or consent shall be effective only in the specific instance and for the particular purpose for which it was given.

8.5 Benefit. The Loan Documents shall be binding upon and shall inure to the benefit of each Obligor and Lender and their respective successors and assigns.

8.6 Assignment and Participation. Lender may assign or sell all or any portion of the Loans and the Loan Documents, in whole or in part, to any other person or entity. In the event of an assignment or sale of Lender's entire interest, Lender shall thereafter be relieved of all liability hereunder (excluding causes of action for Lender's gross negligence or intentional acts prior to such transfer). In addition, Lender may, at any time and without notice to Borrower, sell a participation interest in all or part of the Loans and the Loan Documents to one or more other financial institution. Borrower hereby authorizes Lender to disclose to any actual or prospective assignee or loan participant of Lender all information (including, without limitation, financial information) provided to Lender by Borrower in connection with the Loans. No Borrower may assign the Loan Documents or any interest therein without Lender's prior written consent.

8.7 No Third-Party Beneficiaries. The Loan Documents, including this Agreement, and the terms, conditions, covenants and agreements of the Parties set forth therein are for the sole benefit of the Parties, together with their successors and assigns, and no third party shall be deemed to have any privity of contract nor any right to rely on or use against any Party any term, condition, covenant or agreement contained therein to any extent or for any purpose whatsoever, nor shall any third party have any right of action of any kind arising therefrom or be deemed to be a third party beneficiary thereof.

8.8 Governing Law and Jurisdiction. This Agreement and the other Loan Documents, unless otherwise specifically provided therein, and all matters relating thereto, shall be governed by and construed and interpreted in accordance with the laws of the State of Tennessee; PROVIDED, HOWEVER, to the extent that the creation, validity, perfection, enforceability or priority of any lien or security interest, or the rights and remedies with respect to any lien or security interest, in the Collateral are governed by the laws of a jurisdiction other than the State of Tennessee, then the laws of such jurisdiction shall govern, except as superseded by applicable United States Federal Law. EACH OBLIGOR AGREES THAT ALL DISPUTES BETWEEN ANY OBLIGOR AND LENDER ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, AND WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, SHALL BE RESOLVED ONLY BY STATE OR FEDERAL COURTS LOCATED IN THE STATE OF TENNESSEE, BUT EACH OBLIGOR AND LENDER ACKNOWLEDGE THAT ANY APPEALS FROM SUCH FEDERAL COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF THE STATE OF TENNESSEE BUT STILL LOCATED IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT. EACH OBLIGOR

WAIVES ANY AND ALL DISPUTES AND ANY AND ALL OBJECTIONS THAT IT MAY HAVE TO THE LOCATION OF THE COURT CONSIDERING THE DISPUTE. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST ANY OBLIGOR OR THEIR RESPECTIVE PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION.

8.9 WAIVER OF JURY TRIAL. EACH OBLIGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATED TO THE OBLIGATIONS, OR (B) IN ANYWAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND OBLIGORS WITH RESPECT TO LOAN DOCUMENTS OR THE LOAN, OR IN CONNECTION WITH THE TRANSACTIONS RELATED HERETO OR CONTEMPLATED BY OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES HEREUNDER, OR THE CONDUCT OF THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH OBLIGOR AGREES THAT LENDER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF EACH OBLIGOR IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN ANY OBLIGOR AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

8.10 Severability. Invalidity of any one or more of the terms, conditions or provisions of this Agreement shall in no way affect the balance hereof, which shall remain in full force and effect.

8.11 Construction of Terms. (a) Whenever the context and construction or words so requires, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine; (b) all references to "Sections" shall mean, with respect to the applicable Loan Document, the articles, sections, or paragraphs thereof, however denoted, if denoted at all, and the terms "herein," "hereinbelow," "hereunder," and similar terms are references to the particular Loan Document in its entirety and not merely the particular article, section, or exhibit in which any such term appears; (c) captions and headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the Loan Document or the intent of any provision thereof; (d) all references to any Loan Document shall include all amendments, extensions, renewals, restatements or replacements of the same; (e) the terms "include", "including" and similar terms shall be construed as if followed by the phrase "without being limited to" and "Real Property" "Real Estate," "Personal Property" and "Collateral" shall be construed as if followed by the phrase "or any part thereof"; (f) no inference in favor of any party shall be drawn from the fact that such party has drafted any portion of the Loan Documents; (g) in the event of any inconsistency between the terms of this

Agreement and any other Loan Document (with the exception of the Note) the terms of this Agreement shall control, provided that any provision of any Loan Document, other than this Agreement, which imposes increased or additional obligations upon any Obligor or provides enhanced or additional rights or remedies to Lender shall be deemed to be supplemental to, and not inconsistent with, this Agreement and the other Loan Documents; and (h) any right, remedy, consent or choice of action in favor of Lender under this Agreement and the other Loan Documents shall be exercisable by Lender in its sole and absolute discretion, unless otherwise expressly noted.

8.12 Representation and Disclosure. Each Obligor acknowledges that: (a) each Obligor had the opportunity to seek the advice of independent counsel and has shared equally in the drafting of this Agreement and the other Loan Documents, and (b) it did not rely upon any advice from legal counsel to Lender in the preparation of the Loan Documents or in the closing of the Loan.

8.13 Execution in Counterparts. The Loan Agreement and other Loan Documents may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of the Loan Document, it shall not be necessary to produce or account for more than one such counterpart.

8.14 Examinations/Communications. Lender's examinations, inspections, or receipt of information pertaining to the matters set forth in the Loan Documents shall not in any way be deemed to reduce the full scope and protection of the Loan Documents or the obligations of each Obligor related to the Loan Documents. Lender shall have no duty or obligation of any nature to make any investigation, inspection or review regarding any Collateral at any time, with any such investigation that is undertaken being solely for the benefit of Lender.

8.15 No Partnership. Nothing in the Loan Documents, and no action or inaction whatsoever on the part of Lender undertaken in connection with the Loan, shall be deemed to make Lender a partner or joint venturer with any Obligor, and Borrower shall indemnify and hold Lender harmless from and against any and all claims, losses, causes of action, expenses (including attorneys' fees) and damages arising from the relationship between Lender and any Obligor being construed as or related to be anything other than that of a lender, borrower, guarantor or pledgor, as applicable.

8.16 Notice of Conduct. Each Obligor agrees to use commercially reasonable efforts to give Lender written notice of any action or inaction, to the extent that such Obligor has actual knowledge thereof, by Lender or any agent or attorney of Lender in connection with the Loan Documents or the Obligations of any party under the Loan Documents that such Obligor reasonably believes may be actionable against Lender or any agent or attorney of Lender or a defense to payment of any Obligations, including commission of a tort or violation of any contractual duty implied by law, and a reasonable opportunity to cure or correct such action or inaction. Upon request of Lender from time to time, Borrower shall also confirm in writing the status of the Loan, and the Obligations, and provide other information reasonably requested by Lender.

8.17 Costs, Expenses and Attorneys' Fees. In addition to any payment or reimbursement obligations of any Obligor hereunder and under the other Loan Documents, Borrower shall pay to Lender immediately on demand, the full amount of all reasonable out-of-pocket costs and expenses, including all reasonable and documented attorneys' fees of its outside counsel to Lender, costs of experts that are reasonably necessary in connection with the transactions contemplated by this Loan Agreement and the other Loan Documents and all other reasonable out-of-pocket expenses incurred by Lender: (a) in connection with the analysis, negotiation, preparation, execution, administration, delivery and termination of this Loan Agreement and each of the other Loan Documents and any amendment, modification, restatement, supplement, waiver or consent with respect thereto; (b) upon the occurrence of an Event of Default, and the continuation thereof beyond any applicable cure period, the costs of additional appraisals, environmental studies, collateral and financial audits, title insurance, survey updates and any legal, financial and/or operational reviews; (c) the perfection, preservation, protection and continuation of the liens and security interest granted Lender in the Collateral and the custody, preservation, protection, repair and operation of any of the Collateral; (d) the pursuit by Lender of its rights and remedies under the Loan Documents and applicable law; and (e) defending any counterclaim, cross-claim or other action, or participating in any bankruptcy proceeding, mediation, arbitration, litigation or dispute resolution of any other nature involving Lender, any Obligor or any Collateral.

8.18 Further Assurances. At any time after the date hereof, each Obligor, at the request of Lender, shall execute and deliver such further documents and agreements and take such further actions as Lender reasonably deems necessary or appropriate to permit each transaction contemplated by the Loan Documents to be consummated in accordance with the provisions thereof and to perfect, preserve, protect, continue and enforce Lender's rights and remedies regarding all liens, security interests and rights of Lender under the Loan Documents, security agreements, financing statements, continuation statements, new or replacement promissory note(s), and/or agreements supplementing, extending or otherwise modifying any promissory note(s), this Loan Agreement, and/or any mortgage or security agreement, and certificates as to the amount of the indebtedness evidenced by the Note.

8.19 Time of the Essence. Time is of the essence to all Loan Documents.

8.20 Integration. This Agreement and the other Loan Documents supersede any and all prior expressions, written or oral (including, but not limiting to any commitment letter or term sheets), among the Parties related to, describing or governing the terms of, the Loan and any transaction related thereto.

8.21 USA Patriot Act Notice. Lender hereby notifies each Obligor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Obligor, which information includes the name and address of such Obligor, and other information includes the name and address of Obligors and other information that will allow Lender, as applicable, to identify each Obligor in accordance with the Act.

8.22 Obligors' Agent. Lender shall have the right to deal with any executive officer in regard to all matters arising hereunder and under the other Loan Documents, or otherwise concerning the rights, duties and obligations of Lender and any Obligor hereunder or under the other Loan Documents. PROVIDED, FURTHER, the foregoing authorization shall continue to be binding and effective against each Obligor and may be relied upon by Lender with regards to all future modifications, amendments, increases, waivers and restructurings of the indebtedness and obligations of any Obligor and the Loan Documents and any collateral security with respect thereto, together with any hereafter additional indebtedness and Obligations of any Obligor that may arise in favor of Lender.

8.23 Subordination. Each Obligor, individually and on behalf of such Obligor's Subsidiaries and Affiliates, subordinates any claims, including any right of payment, rents, subrogation, contribution and indemnity, that it may have from or against any other Obligor or its Subsidiaries and Affiliates, and any successor or assign of any such Person, including any trustee, receiver or debtor-in-possession, howsoever arising, due or owing or whether heretofore, now or hereafter existing, to the full payment of all of the Obligations to Lender.

8.24 Savings Clause. Each Obligor acknowledges and agrees that if any such Obligor's indebtedness, liability or obligation under any Loan Document, or if any liens or security interests in favor of Lender securing same, whether now existing or hereafter arising, would, but for the application of this Section, be unenforceable under applicable law as determined by a court of competent jurisdiction, such indebtedness, liability, obligation, lien or security interest shall be valid and enforceable to the maximum extent that would not cause such indebtedness, liability, obligation, lien or security interest to be unenforceable under such applicable law, and such indebtedness, liability, obligation, lien or security interest shall be deemed to have been automatically modified accordingly at all relevant times and without any further action by the Parties.

8.25 No Duty to Investigate or Advise. Each Obligor acknowledges and agrees that Lender will have no obligation to investigate or disclose the financial condition or affairs of any other Obligor for the benefit of such Obligor nor to advise of or disclose to such Obligor any fact respecting, or any change in the financial condition or affairs of any other Obligor which might come to the knowledge of Lender at any time, whether or not Lender knows or believes or has reason to know or believe that any such fact or change is unknown to such Obligor or might (or does) materially increase the risk of such Obligor as a co-obligor or might (or would) affect the willingness of such Obligor to continue as a co-obligor with respect to the Obligations.

8.26 Survival. All representations, warranties, covenants and agreements of each Obligor in this Agreement and any other Loan Document shall survive the execution of such Loan Document, and all indemnity and other reimbursement obligations of any Obligor under this Agreement and any other Loan Document shall survive the termination of such Loan Document.

8.27 Additional Provisions. Riders, schedules and exhibits attached hereto, if any, are hereby incorporated into this Agreement as if set forth verbatim.



8.28 Equal Credit Opportunity Act. In accordance with Title V of Public Law 93-495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the Lender nor the USDA will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status or age (providing the applicant has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. If applicable to the Loan, the Lender will comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

*[Remainder of Page Intentionally Left Blank – Signature Page Follows]*

**SIGNATURE PAGE OF LOAN AGREEMENT**

IN WITNESS WHEREOF, the Parties hereto have executed this Loan Agreement under seal to be effective as of the date first above written:

**BORROWER:**

**THE DIXIE GROUP, INC., a Tennessee corporation**

**By:** \_\_\_\_\_

**Name:**

**Title:**

**TDG OPERATIONS, LLC, a Georgia limited liability company**

**By:** \_\_\_\_\_

**Name:**

**Title:**

**LENDER:**

**GREATER NEVADA CREDIT UNION, a Nevada non-profit corporative corporation**

**By:** \_\_\_\_\_

**Name:**

**Title:**

## GREATER NEVADA CREDIT UNION

### SECURITY AGREEMENT

THIS SECURITY AGREEMENT (“**Agreement**”), effective as of October 29, 2020, is made and entered into by and between **Greater Nevada Credit Union**, a non-profit cooperative corporation organized under the laws of the State of Nevada, together with its successors and assigns, (the “**Secured Party**”), and **The Dixie Group, Inc.**, a corporation organized under the laws of the State of Tennessee, and **TDG Operations, LLC**, a limited liability limited company organized under the laws of the State of Georgia (together with The Dixie Group, Inc., jointly and severally, the “**Debtor**”) (collectively, the “**Parties**” and, singularly, a “**Party**”). The designation of Debtor and Secured Party as used herein shall include said parties successors and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context. All capitalized terms used herein which are not otherwise defined herein, shall have the meaning as defined in that certain Loan Agreement between Debtor, as Borrower, and Secured Party, as Lender, of even date herewith (the “**Loan Agreement**”).

#### RECITAL OF PURPOSE

WHEREAS, under the terms of the Loan Agreement, Secured Party has agreed to loan Debtor the sum of Fifteen Million and No/100 Dollars (\$15,000,000.00) (the “**Loan**”) for the purpose of debt refinancing and loan closing costs;

WHEREAS, the Loan is evidenced by that certain Promissory Note of even date herewith (the “**Note**”);

WHEREAS, Debtor has agreed to secure its obligations under the Note and Loan Agreement by granting to Secured Party a security interest in the Collateral (as hereinafter defined) as security for the Loan; and

WHEREAS, Debtor and Secured Party wish to set forth their Agreement with respect to Debtor’s grant of the security interest in the Collateral by entering into this Agreement.

NOW THEREFORE, Debtor acknowledges the valuable consideration provided to it by the Secured Party through the extension of credit under the Loan Agreement and that it is receiving a direct benefit therefrom and agrees to the terms of this Agreement, for the benefit of Secured Party, as follows:

#### I. SECURITY INTEREST

Debtor hereby grants to Secured Party a continuing security interest in all of Debtor’s right, title and interest in and to all machinery and equipment as further described on Exhibits A and B attached hereto (collectively, the “**Collateral**”).

## II. OBLIGATIONS SECURED

The security interest granted to Secured Party hereby secure the payment and performance of the Note and of all present and future Obligations and all now existing or subsequently arising obligations of Debtor under this Agreement.

## III. FILING OF MORTGAGE, FINANCING STATEMENTS AND OTHER FILINGS

In addition to the recording of the Mortgages, Debtor hereby authorizes Secured Party (i) to prepare and file one or more Uniform Commercial Code (“UCC”) financing statements, including, without limitation, UCC-1 Financing Statements and one or more “Fixture Filings”, as defined under the UCC, covering the Collateral, as Secured Party deems necessary to perfect the liens and security interest on the Collateral, without the signature of Debtor and, (ii) without notice to or the participation of Debtor, to file or record such continuation statements and amendments, as deemed necessary by Secured Party, at any time, to maintain its perfected lien position in the Collateral or any portion thereof. This Agreement, and the security interest and rights granted hereby, shall continue until the Note and all other Obligations have been paid in full.

## IV. USE AND DISPOSITION OF COLLATERAL

Unless and until an Event of Default occurs and is continuing, Debtor may use the Collateral in the ordinary course of the Business and not inconsistent with this Agreement and the Loan Agreement. Except in the ordinary course of the Business, or as otherwise permitted in the Loan Agreement, Debtor shall not sell, encumber, or in any manner dispose of any material portion of the Collateral, unless consented to by Secured Party in writing.

Debtor hereby grants to Secured Party an irrevocable license to enter upon any premises where any tangible items of Collateral are located or where any record of tangible or intangible items of Collateral may be maintained, for purposes of inspecting the Collateral or any portion thereof and to inspect any records relating thereto and in connection therewith (including the copying of any such records). Debtor hereby assigns to Secured Party all right, title and interest of Debtor in and to any leases or other similar agreements between Debtor and various persons with respect to any or all of the Collateral and any books or records relating thereto.

## V. REPRESENTATIONS, WARRANTIES, AND COVENANTS

Debtor represents, warrants and covenants as follows:

1. Subject to any limitations stated in writing herein or in connection herewith, all information furnished by Debtor to Secured Party concerning the Collateral is, or will be at the time the same is furnished, accurate and complete in all material respects.

2. The office where Debtor keeps its records concerning the Collateral is located at its principal place of business at 475 Reed Road, Dalton, Georgia 30722. Debtor will not remove any such records from such locations without the written consent of Secured Party.

3. The Collateral is used exclusively for business purposes as set forth in the Loan Agreement.

4. Debtor has full power and authority to execute and deliver this Agreement and to grant the security interest in the Collateral as provided herein.

5. Debtor has or shall procure and maintain good and marketable title to the Collateral, free and clear of all liens, security interests or encumbrances, except for Permitted Liens.

#### VI. TAXES, ASSESSMENTS AND GOVERNMENTAL CHARGES

Debtor shall pay as and when due any and all taxes, charges and fees arising in relation to or stemming from the creation, perfection, preservation and continuation of any security interest in the Collateral, whenever arising, except those that are being contested in good faith by appropriate proceedings and for which Debtor has set aside adequate reserves.

#### VII. INDEMNIFICATION

If any governmental body, instrumentality, entity, or agency determines at any time that any tax, charge, fee and/or penalty is due and owing with regard to the creation, perfection, preservation, or continuity of the security interest intended to be created hereunder, or assesses such amounts against Secured Party or Debtor, then Secured Party may pay such tax, fee, charge and/or penalty on behalf of Debtor, or require Debtor to pay such tax, fee, charge and/or penalty in full and on demand. If Secured Party pays such tax, fee, charge and/or penalty on behalf of Debtor, then Debtor hereby agrees to indemnify and reimburse Secured Party, in full, for any such amounts and any costs, fees, or charges related thereto, including, without limitation, any and all reasonable attorney fees or other legal costs. Any such taxes, fees, charges and/or penalties paid by Secured Party hereunder shall be deemed an advance secured by the Collateral until paid in full and shall be afforded the same protection as advances made under any Obligation secured by this Agreement.

#### VIII. MAINTENANCE AND PRESERVATION OF COLLATERAL

Debtor will maintain and preserve the Collateral in good order and condition (ordinary wear excluded) and will not permit the Collateral to be wasted or destroyed. Debtor shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances, financing statements and instruments as Secured Party may require for the purpose of more completely vesting in and assuring to Secured Party its rights hereunder and in or to the Collateral. Further, Debtor shall have the continuing and affirmative obligation to take all actions required by Secured Party to maintain perfection and priority of Secured Party's security interest in the Collateral.

#### IX. NO OTHER SECURITY INTEREST OR FINANCING STATEMENTS

Except for Permitted Liens or with the prior written consent of Secured Party, Debtor will not permit or allow to exist any other security interest in or lien upon the Collateral, or any item thereof, or permit any financing statement covering the Collateral or any item thereof to be on file in any public office. Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein. Secured Party, however, may contest any claims made against Debtor in the name of Debtor wherein the security hereunder would by an adverse decision be impaired, and Secured Party may charge to Debtor its reasonable expenses in defending any such claims.

#### X. REPORTS, EXAMINATIONS AND INSPECTIONS

Upon request by Secured Party, Debtor shall periodically furnish to Secured Party information adequate to identify the Collateral and any proceeds arising therefrom, at such times and in such form and substance as may be reasonably requested, together with pledges or assignments in form satisfactory to Secured Party.

Secured Party shall be entitled, during normal business hours and upon reasonable notice to Debtor, by or through any of Secured Party's officers, agents, attorneys, or accountants, to examine or inspect the Collateral wherever located, and to examine, inspect and make extracts from Debtor's books and other records.

#### XI. COSTS AND EXPENSES PAID BY SECURED PARTY

At its option, Secured Party may pay for insurance on the Collateral and any taxes, assessments or other charges that Debtor fails to pay, in accordance with the provisions hereof and of the Loan Agreement. Any payment so made or expense so incurred by Secured Party shall be added to the Obligations of Debtor to Secured Party, shall be payable on demand, shall be deemed an advance secured by the Collateral until paid in full and shall be afforded the same protection as advances made under any Obligation secured by this Agreement.

#### XII. EVENTS OF DEFAULT

Debtor shall be in default under this Agreement upon the happening on any of the following events ("**Events of Default**"):

1. If there shall be any default in any of the payment obligations under the Note (failure to pay any interest or principal when due) or of any of the other Obligations, which is not cured within any applicable cure period;
2. If there shall occur any Event of Default under the Loan Agreement, which is not cured within any applicable cure period;
3. If there shall be any default by Debtor in the due observance or performance of any other covenants, terms, or conditions set forth herein and such default is not cured within thirty (30) days after notice thereof is given by Secured Party to Debtor, or, if such default cannot

be cured within thirty (30) days, remains uncured after a total of ninety (90) days where Debtor has promptly initiated and diligently pursued such cure;

4. If there shall be any loss, theft, substantial damage, destruction, or encumbrance of any material portion or value of the Collateral, not covered by insurance, and such loss or damage is not replaced or repaired within ninety (90) days thereof or such additional time thereafter as may be reasonably necessary;
5. If any representation or warranty of Debtor contained herein is false or misleading in any material respect;
6. If Debtor becomes insolvent or bankrupt, is generally not paying its debts as they become due, makes an assignment for the benefit of creditors, or files for protection under the Federal bankruptcy laws;
7. If a custodian, trustee or receiver is appointed for Debtor or for its property (wherever located) and is not discharged within sixty (60) days after such appointment;
8. If bankruptcy, reorganization, arrangement or insolvency proceeding, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, is instituted by any third party against Debtor, which is not dismissed within sixty (60) days after such institution;
9. If Debtor fails to comply with a request, pursuant to Article VIII herein, to perfect Secured Party's security interest in the Collateral; or
10. If any security interest in any Collateral is not perfected or becomes unperfected through no fault of Secured Party and Debtor fails to take action within five (5) business days of a request from Secured Party to cause the Collateral to be perfected.

### XIII. REMEDIES

Upon the occurrence and continuance of any of the Events of Default specified herein, Secured Party may take any one or more of the following actions:

1. Exercise any and all rights and remedies accorded to it by the UCC in effect in the State of Tennessee (as in effect from time to time), with respect to any or all of the Collateral.
2. Enter upon the premises where any of the Collateral may be located or any of the books and records are kept, take possession of the same, and, after first taking inventory of the Collateral, dispose of it in the following manner:
  - i. In the event the Collateral consists partially, or totally, of items that are perishable, threaten to rapidly decline in value or are of a type customarily sold on a recognized market, Secured Party may sell said items at such time or times and in such manner as it, in its sole discretion, deems economically feasible;

ii. Secured Party may sell all or any part of any Collateral to any person, including Secured Party (if such sale is public). Secured Party shall give Debtor ten (10) days' notice of a sale of Collateral, other than Collateral described in subsection (a) hereinabove;

3. Declare the Note and other Obligations secured hereby to be immediately due and payable without presentment, further demand, protest, or other notice of dishonor of any kind, all of which are hereby expressly waived by Debtor; and

4. Take any and all remedial actions provided under the Loan Agreement and other Loan Documents, and as otherwise permitted under applicable law or in equity.

No delay in accelerating the maturity of the Note or any Obligation as aforesaid or in taking any other action with respect to any Event of Default, or in taking any action or remedy hereunder shall affect the rights of Secured Party to take any other action or remedy with respect thereto. No waiver by Secured Party as to one Event of Default shall affect rights as to any other Event of Default.

#### XIV. MISCELLANEOUS PROVISIONS

1. The provisions of this Agreement may be amended, or compliance with this agreement waived, at any time, by the written agreement of Secured Party and Debtor.

2. Any notice(s) furnished hereunder shall be deemed conclusively to have been received by a party hereto and be effective on the day on which delivered to such party at the address set forth below (or at such other address as such party shall specify to the other parties in writing), or if sent by certified mail, return receipt requested, on the day of delivery or refusal of delivery, as evidenced by the return receipt therefor, if addressed to such party at such address:

1. If to Secured Party:

Greater Nevada Credit Union  
451 Eagle Station Lane  
Carson City, NV 89701  
Attn: Commercial Services

2. If to Debtor:

The Dixie Group, Inc.  
c/o TDG Operations, LLC  
475 Reed Road  
Dalton, GA 30722  
Attn: Jon Faulkner

3. All rights of Secured Party and all of the rights, remedies and duties of Secured Party and Debtor shall be governed by the laws of the State of Tennessee, except as superseded by applicable United States federal law. DEBTOR HEREBY IRREVOCABLY SUBMITS



GENERALLY AND UNCONDITIONALLY, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF ANY TENNESSEE COURT, OR ANY UNITED STATES FEDERAL COURT SITTING IN THE STATE OF TENNESSEE, OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. FURTHERMORE, ISSUER HEREBY WAIVES ANY RIGHT TO REQUIRE A JURY TRIAL.

**SIGNATURE PAGE OF SECURITY AGREEMENT**

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

**DEBTOR:**

**The Dixie Group, Inc., a Tennessee corporation**

By: \_\_\_\_\_

Name: Jon Faulkner

Title: Vice President

**TDG Operations, LLC, a Georgia limited liability company**

By: \_\_\_\_\_

Name: Jon Faulkner

Title: Manager

**SECURED PARTY:**

**GREATER NEVADA CREDIT UNION, a Nevada nonprofit cooperative corporation**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A – COLLATERAL DESCRIPTION**

All of Debtor's right, title and interest in and to the following personal property and fixtures (current and future) of Debtor, wherever located and whether now or hereafter existing or now owned or hereafter acquired or arising (the "Collateral"):

(a) Any and all machinery and equipment as described in **Exhibit B** attached hereto, including, without limitation, all equipment documents, replacements, repairs, additions, attachments, accessories, accessions, parts, tools, dies, or related software (embedded or otherwise), wherever located;

(b) any of the foregoing that is or will become fixtures; and

(c) Any and all proceeds of any of the foregoing (including, but not limited to, any claims to any items referred to in this exhibit and any claims against third parties for loss of, damage to, or destruction of any or all of the Collateral or for proceeds payable under, or unearned premiums with respect to, policies of insurance) in whatever form, including, but not limited to, cash, negotiable instruments and other instruments for the payment of money, chattel paper, security agreements and other documents and the proceeds of such proceeds.

All terms used herein which are defined in the Uniform Commercial Code of the State of Tennessee, as amended from time to time, shall have the meaning assigned to them in said Uniform Commercial Code.

**EXHIBIT B – EQUIPMENT LIST**

B - 1

NPCHLT1:1788931.3-AGR-(CMILLER) 057716-00028

CREDIT AGREEMENT

DATED AS OF OCTOBER 30, 2020

AMONG

THE DIXIE GROUP, INC.  
and  
TDG OPERATIONS, LLC

as Borrower,

FIFTH THIRD BANK, NATIONAL BANK

as Agent, L/C Issuer and Swing Line Lender,  
THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO,  
AND

FIFTH THIRD BANK, NATIONAL ASSOCIATION

as Sole Lead Arranger and Sole Bookrunner

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## CREDIT AGREEMENT

CREDIT AGREEMENT dated as of October 30, 2020, among THE DIXIE GROUP, INC., and TDG OPERATIONS, LLC (individually or collectively, as the context may require, “Borrower”), the financial institutions or other entities from time to time parties hereto, each as a Lender, and FIFTH THIRD BANK, NATIONAL ASSOCIATION, a national banking association, as Agent, L/C Issuer and Swing Line Lender.

### RECITALS

WHEREAS, Borrower desires that Lenders extend certain revolving credit facilities to Borrower to provide funds necessary for the purpose of refinancing certain indebtedness of Borrower and providing (a) working capital financing for Borrower, (b) funds for other general corporate purposes of Borrower, and (c) funds for other purposes permitted hereunder; and

WHEREAS, Borrower and each Loan Party desires to secure all of the Obligations by granting to Agent, for the benefit of the Secured Parties, a first-priority perfected Lien upon the Collateral, as defined herein, pursuant to the terms of the Loan Documents;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows:

### 1. DEFINITIONS

#### 1.1 Certain Defined Terms

. For purposes of the Loan Documents, capitalized terms shall have the meanings as defined in this Agreement (including, as applicable, each Annex to this Agreement and Appendix A to this Agreement).

#### 1.2 Accounting Terms and Determinations

. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including determinations made pursuant to the exhibits hereto) shall be made, and all Financial Statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated Financial Statements of the Loan Parties and their Subsidiaries delivered to Agent and Lenders on or prior to the Closing Date. If at any time any change in GAAP would, in either case, affect the computation of any financial ratio or financial requirement set forth in any Loan Document, and any of Agent, Borrower or Required Lenders shall so request, Agent, Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the final approval of Agent and Required Lenders); *provided*, that until so amended,

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(a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) the Loan Parties shall provide to Agent and Lenders Financial Statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP; *provided, further*, that (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party at “fair value”, as defined therein shall be disregarded for the purposes of computing any financial ratios and requirements herein and (ii) the effect of any changes to GAAP that would require leases which are, or would have been, classified as operating leases under GAAP as it exists on the Closing Date to be classified and accounted for as capital leases under the revised GAAP (including by reason of adoption of FASB Accounting Standards Update 2016-02) shall be disregarded for the purposes of computing any financial ratios and requirements herein. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Loan Parties shall not, without the prior written consent of Agent, cause or permit any change in application of GAAP, or any method of GAAP utilized, by the Loan Parties in their Financial Statements after the Closing Date.

### 1.3 Other Definitional Provisions and References

. References in this Agreement to “Sections”, “Annexes”, “Exhibits”, “Appendices” or “Schedules” shall be to Sections, Annexes, Exhibits, Appendices or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation.” Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. The references “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including,” respectively. References in any Loan Document to the knowledge (or an analogous phrase) of any Loan Party are intended to signify that such Loan Party has actual knowledge or awareness of a particular fact or circumstance or that such Loan Party, if it had exercised reasonable diligence, would have known or been aware of such fact or circumstance. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among parties hereto shall be made in lawful money of the United States and in immediately available funds. Time is of the essence in Borrower’s and each other Loan Party’s performance under this Agreement and all other Loan Documents. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. Except as otherwise specified or limited herein, references to any statute or act shall include all related regulations, rules and orders and all amendments and supplements and any successor or replacement statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document (including the Loan Documents and any Organizational Document) shall include all schedules, exhibits, annexes, appendices and other attachments thereto and shall be construed as referring to such agreement, instrument or document as from time to time amended, amended and restated, modified, extended, restated, replaced or supplemented (subject to any

restrictions on such amendments, amendments and restatements, modifications, extensions, restatements, replacements and supplements set forth herein or in any other Loan Document).

#### 1.4 Time References

. All time references in the Loan Documents are to Cincinnati, Ohio time.

#### 1.5 LIBOR

. Agent and Lenders do not warrant or accept responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of "LIBOR".

### 2. **ADVANCES AND LETTERS OF CREDIT**

#### 2.1 Revolving Credit Advances and Borrowings.

(a) Subject to the terms and conditions hereof, each Lender severally (and not jointly) agrees to make available to Borrower from time to time until the Commitment Termination Date its Pro Rata Share of advances pursuant to its Revolving Loan Commitment (each, a "Revolving Credit Advance"); *provided*, that the aggregate principal amount of such Revolving Credit Advances will not result in (i) such Lender's Revolving Exposure exceeding such Lender's Revolving Loan Commitment or (ii) the aggregate Revolving Exposure of all Lenders exceeding the lesser of (x) the Maximum Revolver Amount and (y) the Borrowing Base, subject in all cases to Agent's authority, in its Permitted Discretion, to make Protective Advances and Overadvances pursuant to Section 2.1(b) and 2.1(c). Until the Commitment Termination Date, Borrower may from time to time borrow, repay and reborrow under this Section 2.1(a). All Advances shall be due and payable on the Commitment Termination Date.

(i) Borrower shall deliver to Agent a Notice of Borrowing with respect to each proposed borrowing of a Revolving Credit Advance (other than Revolving Credit Advances made pursuant to clause (ii) of this Section 2.1(a) or Section 2.1(c) or Section 2.3(b)), such Notice of Borrowing to be delivered no later than: (A) 2:00 p.m. (or such later time acceptable to Agent in its sole discretion) on the day of such proposed borrowing, in the case of Revolving Credit Advances in an aggregate principal amount equal to or less than ten percent (10%) of the Revolving Loan Commitment, and (B) the day that is one (1) Business Day prior to such proposed borrowing, in the case of Revolving Credit Advances in an aggregate principal amount greater than ten percent (10%) of the Revolving Loan Commitment. Once given, a Notice of Borrowing shall be irrevocable and Borrower shall be bound thereby.

(ii) Borrower hereby authorizes Lenders and Agent to make Revolving Credit Advances based on telephonic or electronic notices made by any Person which Agent, in good faith, believes to be acting on behalf of Borrower, in accordance with procedures established by or otherwise acceptable to Agent from time to time in its sole discretion (including Agent's confirmation of such notices). All Revolving Credit Advances will be advanced to the Disbursement Account, unless Borrower otherwise instructs Agent.



(b) Any provision of this Agreement to the contrary notwithstanding, at the request of Borrower, Agent may, in its discretion (but shall have absolutely no obligation to), make Revolving Credit Advances to Borrower on behalf of Lenders in amounts that cause the outstanding balance of the aggregate Revolving Exposure of all Lenders to exceed the Borrowing Base (any such excess Revolving Credit Advances are herein referred to collectively as “Overadvances”); *provided*, that (i) no such event or occurrence shall cause or constitute a waiver of Agent’s, the Swing Line Lender’s or Lenders’ right to refuse to make any further Overadvances, Swing Line Advances or Revolving Credit Advances, or incur any Letter of Credit Obligations at any time that an Overadvance exists, and (ii) no Overadvance shall result in a Default or Event of Default due to Borrower’s failure to comply with Section 2.2(b)(i) for so long as Agent permits such Overadvance to remain outstanding, but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the conditions to lending set forth in Section 8.2 have not been met. All Overadvances shall constitute Base Rate Loans, may in Agent’s sole election (or otherwise at the written request of Required Lenders, shall) bear interest at the Default Rate and shall be payable on the earlier of demand or the Commitment Termination Date. The authority of Agent to make Overadvances is limited to an aggregate amount for all such Overadvances and Protective Advances not to exceed 10% of the Borrowing Base. No Overadvances may remain outstanding for more than 60 days and no Overadvance shall cause any Lender’s Revolving Exposure to exceed its Revolving Loan Commitment. Any such revocation shall be in writing and shall become effective prospectively upon Agent’s receipt of such revocation. Upon the making of an Overadvance by Agent, each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from Agent, without recourse or warranty, an undivided interest and participation in such Overadvance in proportion to its Pro Rata Share of the Revolving Loan Commitment. Agent may, at any time, require the Lenders to fund such participations; *provided*, that the Revolving Exposure of any Lender after giving effect to any such participations in Overadvances shall not exceed such Lender’s Revolving Loan Commitment. From and after the date, if any, on which any Lender is required to fund its participation in any Overadvance purchased hereunder, Agent shall promptly distribute to such Lender, such Lender’s Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by Agent in respect of such Overadvance.

(c) Subject to the limitations set forth below, Agent is authorized by Borrower and the Lenders, from time to time in Agent’s sole discretion (but Agent shall have absolutely no obligation), to make Advances to Borrower, on behalf of all Lenders, which Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Advances and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by Borrower pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 10.1) and other sums payable under the Loan Documents (any of such advances are herein referred to as “Protective Advances”); *provided*, that the aggregate amount of Protective Advances and Overadvances outstanding at any time shall not at any time exceed 10% of the Borrowing Base; *provided, further*, that (A) the aggregate Revolving Exposure of all Lenders after giving effect to the Protective Advances being made shall not exceed the aggregate Revolving Loan Commitments and (B) the Revolving Exposure of any Lender after giving effect to the Protective Advances being made shall not exceed such Lender’s Revolving Loan Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 8.2 have not been satisfied. The Protective Advances shall constitute Obligations hereunder. All Protective Advances shall be Base

Rate Loans. At any time that there is sufficient Borrowing Availability and the conditions precedent set forth in Section 8.2 have been satisfied, Agent may request the Lenders to make a Revolving Credit Advance to repay a Protective Advance. At any other time Agent may require the Lenders to fund their risk participations as described in this Section 2.1(c). Upon the making of a Protective Advance by Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Pro Rata Share of the Revolving Loan Commitment. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by Agent in respect of such Protective Advance.

(d) The making of each Advance by Agent or any Lender, whether under Section 2.1(a), Section 2.1(c) or Section 2.3, will be deemed to be a representation by Borrower that (i) the Advance will not violate the terms of Section 2.1(a), Section 2.1(c), or Section 2.3 and (ii) all Eligible Accounts and Eligible Inventory then comprising the Borrowing Base meet the criteria for Eligible Accounts and Eligible Inventory, respectively. Neither Agent nor any Lender shall have any duty to follow, or any liability for, the application by Borrower of any proceeds of any Advance.

## 2.2 Prepayments/Commitment Reductions.

(a) Terminations in Revolving Loan Commitments. Borrower may at any time on at least 10 days' prior written notice to Agent permanently reduce (but not terminate) the Revolving Loan Commitment; *provided*, that (A) any such reduction shall be in a minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of such amount, (B) the Revolving Loan Commitment shall not be reduced to an amount less than \$60,000,000, and (C) after giving effect to such reduction, Borrower shall comply with Section 2.2(b)(i). Borrower may at any time on at least 10 days' prior written notice to Agent terminate the Revolving Loan Commitment, *provided*, that upon such termination all Advances and other Obligations shall be immediately due and payable in full and all Letter of Credit Obligations shall be cash collateralized or otherwise satisfied in accordance with Annex A. Any voluntary reduction or termination of the Revolving Loan Commitment must be accompanied by payment of any LIBOR funding breakage costs in accordance with Section 2.5(d). Upon any such reduction or termination of the Revolving Loan Commitment, Borrower's right to request Revolving Credit Advances, or request that Letter of Credit Obligations be incurred on its behalf, or request Swing Line Advances, shall simultaneously be permanently reduced or terminated, as the case may be; *provided*, that a permanent reduction of the Revolving Loan Commitment shall not require a corresponding pro rata reduction in the L/C Sublimit. Each notice of partial prepayment shall designate the Advance or other Obligations to which such prepayment is to be applied.

### (b) Mandatory Prepayments.

(i) Subject to Section 2.1(b), if at any time the outstanding balance of the aggregate Revolving Exposure exceeds Availability, Borrower shall immediately repay the aggregate outstanding Revolving Credit Advances and/or Swing Line Advances to the extent required to eliminate such excess. If any such excess remains after repayment in full of the

aggregate outstanding Revolving Credit Advances and Swing Line Advances, Borrower shall provide cash collateral for the Letter of Credit Obligations in the manner set forth in Annex A to the extent required to eliminate such excess. Any such prepayment shall be applied in accordance with Section 2.2(c). Notwithstanding the foregoing, any Overadvance made pursuant to Section 2.1(b) shall be repaid in accordance with Section 2.1(b).

(ii) Immediately upon receipt by any Loan Party or Subsidiary of cash proceeds of any voluntary or involuntary sale or disposition of Collateral (excluding proceeds of sales of Inventory in the Ordinary Course of Business), Borrower shall prepay the Advances in an amount equal to all such cash proceeds, net of (A) commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by Borrower in connection therewith (in each case, paid to non-Affiliates), (B) transfer taxes, (C) amounts payable to holders of senior Liens on such assets (to the extent such Liens constitute Permitted Encumbrances hereunder), and (D) an appropriate reserve for income taxes in accordance with GAAP in connection therewith (it being understood that to the extent any such reserve is reversed or abandoned, the amount so reversed or abandoned shall constitute cash proceeds payable pursuant to this Section). Any such prepayment shall be applied in accordance with Section 2.2(c).

(iii) If any Loan Party issues Stock or receives a capital contribution, no later than the Business Day following the date of receipt of the proceeds thereof, Borrower shall notify Agent of such Loan Party's receipt of such proceeds and shall prepay the Advances (and cash collateralize Letter of Credit Obligations) in an amount equal to all such proceeds, net of underwriting discounts and commissions and other reasonable costs paid to non-Affiliates in connection therewith. Any such prepayment shall be applied in accordance with Section 2.2(c).

(iv) If any Loan Party incurs Indebtedness not permitted under the terms of this Agreement, no later than the second Business Day following the date of receipt of the proceeds thereof, Borrower shall notify Agent of such Loan Party's receipt of such proceeds and shall prepay the Advances (and cash collateralize Letter of Credit Obligations) in an amount equal to all such proceeds, net of reasonable costs paid to non-Affiliates in connection therewith. Any such prepayment shall be applied in accordance with Section 2.2(c).

(v) If any Loan Party receives proceeds of any Approved Credit Insurance, no later than the Business Day following the date of receipt of such proceeds, Borrower shall prepay the Advances (and cash collateralize Letter of Credit Obligations) in an amount equal to all such proceeds. Any such prepayment shall be applied in accordance with Section 2.2(c).

(c) Application of Certain Mandatory Prepayments. So long as no Event of Default or Application Event has occurred and is continuing, any prepayments made by Borrower pursuant to Section 2.2(b) shall be applied as follows: first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, second, to prepay any Swing Line Advances that may be outstanding, third to prepay the Advances without a corresponding reduction in the Revolving Loan Commitments, and fourth to cash collateralize outstanding Letter of Credit Obligations in the manner set forth on Annex A. If any Event of Default has occurred and is continuing, but an Application Event is not in existence, such amounts shall be applied as provided in Section 9.3(b). If an Application Event

has occurred and is continuing, such amounts shall be applied as provided in Section 9.3(c) All prepayments made pursuant to Section 2.2(b) must be accompanied by payment of any LIBOR funding breakage costs in accordance with Section 2.5(d).

(d) Application of Prepayments to LIBOR Loans. Any prepayment of a LIBOR Loan on a day other than the last day of an Interest Period therefor shall include interest on the principal amount being repaid and shall be subject to Section 2.5(d). All prepayments of an Advance shall be applied first to that portion of such Advance comprised of Base Rate Loans and then to that portion of such Advance comprised of LIBOR Loans, in direct order of Interest Period maturities.

(e) No Implied Consent. Nothing in this Section 2.2 shall be construed to constitute Agent's or any Lender's consent to any transaction that is not expressly permitted by other provisions of this Agreement or the other Loan Documents or a waiver of any Event of Default arising therefrom.

(f) Commitment Termination Date. All of the Obligations shall, if not sooner paid or required to be paid pursuant to this Agreement or any other Loan Document, be due and payable in full on the Commitment Termination Date.

### 2.3 Swing Line Advances.

(a) Swing Line Lender may, from time to time, at its sole election and without prior notice to or consent by any Lender or Borrower, convert any request or deemed request by Borrower for a Revolving Credit Advance that is a Base Rate Loan into a request for an advance made by, and for the account of, Swing Line Lender in accordance with the terms of this Agreement (each such advance, a "Swing Line Advance"). Each Swing Line Advance shall be a Base Rate Loan, and shall be advanced by Swing Line Lender in the same manner as Revolving Credit Advances are advanced hereunder, in accordance with the provisions of Section 2.1 or as *provided*, that no Swing Line Advances shall be made at any time that an Event of Default under Section 9.1(a), (h) or (i) has occurred and is continuing. The aggregate amount of Swing Line Advances outstanding shall not exceed at any time the lesser of (A) the Swing Line Maximum Amount and (B) Borrowing Availability. If at any time the outstanding Swing Line Advances exceed the Swing Line Maximum Amount, then, on the next succeeding Business Day, Borrower shall repay Revolving Credit Advances and/or Swing Line Advances, cash collateralize Letter of Credit Obligations in the manner specified on Annex A or cause the cancellation of outstanding Letters of Credit, or any combination of the foregoing, in an aggregate amount equal to such excess.

(b) Swing Line Lender shall give Agent prompt notice of each Swing Line Advance made by Swing Line Lender. In the event that on any Business Day Swing Line Lender desires that all or any portion of the outstanding Swing Line Advances should be reduced, in whole or in part, Swing Line Lender shall notify Agent to that effect and indicate the portion of the Swing Line Advance to be so reduced. Swing Line Lender hereby agrees that it shall notify Agent to reduce the Swing Line Advance to zero at least once every week. Agent agrees to transmit to Lenders the information contained in each notice received by Agent from Swing Line Lender regarding the reduction of outstanding Swing Line Advances and shall concurrently notify such Lenders of each such Lender's Pro Rata Share of the obligation to make a Revolving Credit Advance to repay outstanding Swing Line

Advances (or the applicable portion thereof). Each Lender hereby unconditionally and irrevocably agrees to fund to the Loan Account, for the benefit of Swing Line Lender, not later than 12:00 noon on the Business Day immediately following the Business Day of such Lender's receipt of such notice from Agent (*provided*, that if any Lender shall receive such notice at or prior to 10:00 a.m. on a Business Day, such funding shall be made by such Lender on such Business Day), such Lender's Pro Rata Share of a Revolving Credit Advance (which Revolving Credit Advance shall be a Base Rate Loan and shall be deemed to be requested by Borrower) in the principal amount equal to the portion of the Swing Line Advance which is required to be paid to Swing Line Lender under this Section 2.3. The proceeds of any such Revolving Credit Advances so funded shall be immediately paid over to Agent for the benefit of Swing Line Lender for application against then-outstanding Swing Line Advances. For purposes of this Section 2.3 Swing Line Lender shall be conclusively entitled to assume that, at the time of the advance of any Swing Line Advance, each Lender will fund its Pro Rata Share of the Revolving Credit Advances provided for in this Section 2.3.

(c) In the event that, at any time any Swing Line Advances are outstanding, either (i) an Event of Default pursuant to Section 9.1(h) or 9.1(i) has occurred or (ii) the Revolving Loan Commitment has been suspended or terminated in accordance with the provisions of this Agreement, then in either case, each Lender (other than Swing Line Lender) shall be deemed to have irrevocably and immediately purchased and received from Swing Line Lender, without recourse or warranty, an undivided interest and participation in the Swing Line Advances in an aggregate amount equal to such Lender's Pro Rata Share of each Swing Line Advance outstanding. Any purchase obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstances whatsoever. In the event that on any Business Day Swing Line Lender desires to effect settlement of any such purchase, Swing Line Lender shall promptly notify Agent to that effect and indicate the payment amounts required by each Lender to effect such settlement. Agent agrees to transmit to Lenders the information contained in each notice received by Agent from Swing Line Lender and shall concurrently notify such Lenders of each such Lender's Pro Rata Share of the required payment settlement amount. Each such Lender shall effect such settlement upon receipt of any such notice by transferring to Agent's account specified by Agent to Lenders from time to time not later than 12:00 noon on the Business Day immediately following the Business Day of receipt of such notice (*provided*, that if any such Lender shall receive such notice at or prior to 10:00 a.m. on a Business Day, such funding shall be made by such Lender on such Business Day), an amount equal to such Lender's participation in the Swing Line Advance.

(d) In the event any Lender fails to make available to Agent when due the amount of such Lender's participation in the Swing Line Advances, Swing Line Lender shall be entitled to recover such amount on demand from such Lender together with interest at the Federal Funds Rate, for the first 3 days following the due date, and thereafter at the Base Rate plus the Applicable Margin for Base Rate Loans in respect of Swing Line Advances. Any Lender's failure to make any payment requested under this Section 2.3 shall not relieve any other Lender of its obligations hereunder, but no Lender shall be responsible for the failure of any other Lender to make available to Agent such other Lender's required payment hereunder. The obligations of Lenders under this Section 2.3 shall be deemed to be binding upon Agent, Swing Line Lender and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to Borrower or any other Loan Party.

#### 2.4 Interest and Applicable Margins; Fees.

(a) Subject to Sections 2.1(b), 2.1(c), 2.4(c) and 2.4(d), each Advance shall bear interest on the outstanding principal amount thereof from the date when made at a rate per annum equal to LIBOR or the Base Rate, as the case may be, plus the Applicable Margin; *provided*, that Swing Line Advances may not be LIBOR Loans. Each determination of an interest rate by Agent shall be conclusive and binding on Borrower and the Lenders in the absence of manifest error. All computations of Fees and interest payable under this Agreement shall be made on the basis of a 360-day year and actual days elapsed. Interest and Fees shall accrue during each period during which interest or such Fees are computed from (and including) the first day thereof to (and including) the last day thereof.

(b) All as determined by Agent in accordance with the Loan Documents and Agent's loan systems and procedures periodically in effect, interest shall be paid in arrears (i) on each Interest Payment Date and (ii) on the date of each payment or prepayment of Advances on and after the Commitment Termination Date.

(c) At the election of Agent or the Required Lenders while any Event of Default exists (or automatically while any Event of Default under Section 9.1(a), 9.1(h) or 9.1(i) exists), interest (after as well as before entry of judgment thereon to the extent permitted by Law) on the Advances and the Letter of Credit Fees shall increase, from and after the date of occurrence of such Event of Default, to a rate per annum which is determined by adding 2.0% per annum to the Applicable Margin or Letter of Credit Fee, as applicable, then in effect for such Advances (plus LIBOR or the Base Rate, as the case may be) or Letter of Credit Obligations, as applicable (the "Default Rate"). All such interest shall be payable on demand of Agent or the Required Lenders.

(d) Anything herein to the contrary notwithstanding, the obligations of Borrower hereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any Law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event Borrower shall pay such Lender interest at the highest rate permitted by applicable Law ("Maximum Lawful Rate") for such period; *provided*, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, Borrower shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent, on behalf of Lenders, is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement.

(e) Fees.

(i) Agent's Fees. Borrower agrees to pay to Agent, for its own account, Fees payable in the amounts and at the times as set forth in the Fee Letter.

(ii) Unused Line Fees. Borrower agrees to pay to Agent for the account of each Lender according to its Pro Rata Share of the Revolving Loan Commitments, a commitment fee (the "Unused Line Fee"), which shall accrue, as of each day during the period from and

including the Closing Date to but excluding the date on which the Revolving Loan Commitments terminate, at the Applicable Unused Line Fee on the then daily amount of the difference of the Revolving Loan Commitments of all Lenders minus the sum of (A) the aggregate outstanding amount of all Revolving Credit Advances of all Lenders plus (B) the outstanding amount of Letter of Credit Obligations. The accrued Unused Line Fee shall be payable in arrears on each Interest Payment Date, all as determined by Agent in accordance with the Loan Documents and Agent's loan systems and procedures periodically in effect. Accruals of the Unused Line Fee shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed during the applicable period (including the first day but excluding the last day of such period).

(iii) Letter of Credit Fees. Borrower agrees to pay to Agent:

(a) For the account of each Lender according to its Pro Rata Share of the Revolving Loan Commitments, as compensation to such Lenders for their participation interest in the Letter of Credit Obligations incurred hereunder with respect to Letters of Credit (each a "Letter of Credit Fee"): (A) in arrears on each Interest Payment Date, all as determined by Agent in accordance with the Loan Documents and Agent's loan systems and procedures periodically in effect, for each month during which any standby Letter of Credit Obligation shall remain outstanding, a Fee in an amount equal to the Applicable Margin for LIBOR Loans from time to time in effect multiplied by the maximum amount available from time to time to be drawn under the applicable Letter of Credit; and (B) on the date of issuance of each commercial Letter of Credit, a Fee in an amount equal to the Applicable Margin for LIBOR Loans in effect on such date of issuance on the stated amount of each such commercial Letter of Credit.

(b) For the account of L/C Issuer, on demand, such Fees (including all current issuance, opening, closing, transfer, amendment, draw, renewal, negotiation and other letter of credit administration fees) and other charges and expenses of L/C Issuer in respect of the issuance, negotiation, acceptance, amendment, transfer and payment of such Letter of Credit or otherwise payable pursuant to the application and related documentation under which such Letter of Credit is issued. Borrower further agrees to pay to Agent and each Lender all costs and expenses incurred by Agent or any Lender on account of any Letter of Credit Obligations.

All such Fees are fully earned by the applicable Lenders when paid and non-refundable. The Letter of Credit Fee will be calculated on the basis of the actual number of days elapsed in a 360-day year. If any Letter of Credit is cancelled for any reason before the stated expiry date thereof, the Letter of Credit Fee or any other Fee paid in advance will not be refunded and will be retained by the applicable Lenders solely for their account.

(iv) NSF Fees. In addition to, and without limiting, any other provision of this Agreement or the other Loan Documents, Agent may impose a non-sufficient funds fee for any check that is presented for payment that is returned for any reason.

## 2.5 LIBOR Provisions.

(a) LIBOR Election. Subject to the provisions of Section 9.2(c), Borrower may request that Revolving Credit Advances permitted to be made hereunder be LIBOR Loans and that outstanding portions of Advances made hereunder be converted to LIBOR Loans. Any request with respect to a new Revolving Credit Advance will be made by submitting a Notice of Borrowing to Agent. Once given, and except as provided in clause (b) below, a Notice of Borrowing shall be irrevocable and Borrower shall be bound thereby. In the case of any conversion of a Base Rate Loan to a LIBOR Loan, any conversion of an existing LIBOR Loan to a new LIBOR Loan with a different Interest Period, or any conversion of a LIBOR Loan to a Base Rate Loan, such election must be made pursuant to a written notice in form and substance acceptable to Agent (a “Notice of Conversion/Continuation”). In addition to the other provisions of this Agreement, as a condition to any LIBOR election hereunder, on or before the date on which the applicable LIBOR Loan is to be advanced or converted hereunder, in each case in accordance with Agent’s loan policies and procedures periodically in effect, Borrower shall notify Agent of each of the following: (i) the requested amount of such LIBOR Loan, (ii) the Interest Period Borrower has elected to apply to such LIBOR Loan, and (iii) the commencement date of such Interest Period applicable thereto. Subject to the provisions of Section 9.2(c), upon the expiration of an Interest Period, in the absence of a Notice of Conversion submitted to Agent not later than 12:00 noon (or such later time acceptable to Agent in its sole discretion) on the Business Day on which such Interest Period expires, the LIBOR Loan then maturing shall be automatically continued as a LIBOR Loan for the same Interest Period commencing on the date on which such expiring Interest Period ends. Unless otherwise permitted by Agent in its sole discretion: (A) in no event may the last day of any Interest Period exceed the Commitment Termination Date, (B) in no event may any new Interest Period commence with respect to any LIBOR Loan requested to be converted hereunder prior to the expiration of the applicable Interest Period then in effect with respect to such LIBOR Loan, (C) there may be no more than seven (7) LIBOR Loans outstanding at any one time, and (D) if required by Agent in its sole discretion at any time and from time to time, each request for a LIBOR Loan, whether by original issuance or conversion, shall be in a minimum amount of \$5,000,000 and, if in excess of such amount, in an integral multiple of \$1,000,000 in excess of such amount. New Advances which are not requested as LIBOR Loans in accordance with this Section 2.5(a) shall be Base Rate Loans.

### (b) Inability to Determine LIBOR.

(i) Temporary Inability. In the event, prior to commencement of any Interest Period relating to a LIBOR Loan, Agent shall determine that (A) deposits in Dollars (in the applicable amounts) are not being offered to it in the London Interbank Offered Rate market for such Interest Period, (B) by reason of circumstances affecting the London Interbank Offered Rate Market adequate and reasonable methods do not exist for ascertaining LIBOR, (C) LIBOR as determined by Agent will not adequately and fairly reflect the cost to the Lenders of funding their LIBOR Loans for such Interest Period or (D) the making or funding of LIBOR Loans become impracticable; then, Agent shall promptly provide notice of such determination to Borrower and Lenders (which shall be conclusive and binding on Borrower and Lenders), and (x) any request for a LIBOR Loan or for a conversion to or continuation of a LIBOR Loan shall be automatically withdrawn and shall be deemed a request for a Base Rate Loan, (y) each LIBOR Loan will automatically, on the last day of the then current Interest Period relating



thereto, become a Base Rate Loan, and (z) the obligations of Lenders to make LIBOR Loans shall be suspended until Agent determines that the circumstances giving rise to such suspension no longer exist, in which event Agent shall so notify Borrower and Lenders.

(ii) Permanent Inability.

(A) In the event Agent shall determine (which determination shall be deemed presumptively correct absent manifest error) or be notified by Required Lenders or Borrower that: (1) the circumstances set forth in Section 2.5(b) (i) have arisen and such circumstances are unlikely to be temporary; (2) a public statement or publication of information has been made (a) by or on behalf of the administrator of LIBOR; or by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, stating that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR, (b) by the administrator of LIBOR that it has invoked or will invoke, permanently or indefinitely, its insufficient submissions policy, or (c) by the regulatory supervisor for the administrator of LIBOR or any Governmental Authority having jurisdiction over Agent announcing that LIBOR is no longer representative or may no longer be used; (3) a LIBOR rate is not published by the administrator of LIBOR for five consecutive Business Days and such failure is not the result of a temporary moratorium, embargo or disruption declared by the administrator of LIBOR or by the regulatory supervisor for the administrator of LIBOR; or (4) a new index rate has become a widely-recognized replacement benchmark rate for LIBOR in newly originated or amended loans denominated in Dollars in the U.S. market; then Agent may, in consultation with Borrower, amend this Agreement as described below to replace LIBOR with an alternative replacement index and to modify the applicable margins (the new index and margin together, the “Benchmark Replacement”), in each case giving due consideration to any evolving or then existing convention for similar US dollar denominated credit facilities, or any selection, endorsement or recommendation by a relevant governmental body with respect to such facilities. Agent may also from time to time, in Agent’s sole discretion, make other related amendments (“Conforming Changes”), including but not limited to increasing or decreasing the “floor” applicable to the replacement index and/or Benchmark Replacement, to permit the administration thereof by Agent in an administratively and operationally practicable manner and in a manner substantially consistent with market practice and similarly situated counterparties with similar assets in similar facilities.

(B) the Agent shall provide notice to Borrower of an amendment of this Agreement to reflect the Benchmark Replacement and Conforming Changes. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents (including, without limitation, Section 12.5), such amendment shall become effective without any further action or consent of any other party to this Agreement upon delivery

of notice to Borrower and on the fifth (5<sup>th</sup>) Business Day after the date that a draft of the amendment is provided to Lenders, unless Agent receives, on or before such fifth (5<sup>th</sup>) Business Day, a written notice from Required Lenders stating that such Lenders object to such amendment.

(C) For the avoidance of doubt, following the date when a determination is made pursuant to Section (b) (ii), above, and until a Benchmark Replacement has been selected and implemented in accordance with the terms and conditions of Section 2.5(b)(ii) (A) or (B), at Agent's election, all Loans shall accrue interest as Base Rate Loans, and the Interest Rate shall be based on the Base Rate.

(iii) Subject to any Conforming Changes, if at any time the replacement index is less than 0.75% then at such times, such index shall be deemed to be 0.75% for purposes of this Agreement; provided, however, even if the replacement index is greater than 0.75%, if due to a negative margin the Benchmark Replacement would be 0.75%, the Benchmark Replacement shall be deemed to be 0.75%.

(iv) In the event that circumstances similar to those set out in Section 2.5(b)(ii) occur in relation to an index selected to replace LIBOR (or another index previously selected pursuant to this provision) or if Agent determines a replacement index is administratively or operationally impracticable, the terms governing replacement of LIBOR set forth in Section 2.5(b)(ii) shall govern replacement of the replacement index.

(c) Illegality. Notwithstanding any other provisions hereof, if any Law shall make it unlawful for any Lender to make, fund or maintain LIBOR Loans, such Lender shall promptly give notice of such circumstances to Agent, Borrower and the other Lenders. In such an event, (i) the commitment of such Lender to make LIBOR Loans, continue LIBOR Loans as LIBOR Loans or convert Base Rate Loans to LIBOR Loans shall be immediately suspended and (ii) such Lender's outstanding LIBOR Loans shall be converted automatically to Base Rate Loans on the last day of the Interest Period thereof or at such earlier time as may be required by Law.

(d) LIBOR Breakage Fee. Upon (i) any default by Borrower in making any borrowing of, conversion into or continuation of any LIBOR Loan following Borrower's delivery to Agent of any applicable Notice of Borrowing or (ii) any payment of a LIBOR Loan on any day that is not the last day of the Interest Period applicable thereto (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise), Borrower shall promptly pay each Lender an amount equal to the amount of any losses, expenses and liabilities (including any loss (including interest paid) in connection with the re-employment of such funds) that such Lender sustains as a result of such default or such payment. For purposes of calculating amounts payable to a Lender under this paragraph, each Lender shall be deemed to have actually funded its relevant LIBOR Loan through the purchase of a deposit bearing interest at LIBOR in an amount equal to the amount of that LIBOR Loan and having a maturity and repricing characteristics comparable to the relevant Interest Period; *provided*, that each Lender may fund each of its LIBOR Loans in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this subsection.

(e) Increased Costs. If, after the Closing Date, any Change in Law: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the Board of Governors of the Federal Reserve System, or any successor thereto, but excluding any reserve included in the determination of LIBOR pursuant to the provisions of this Agreement), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by any Lender, or (ii) shall impose on any Lender any other condition affecting its LIBOR Loans, any of its notes issued pursuant hereto (if any) or its obligation to make LIBOR Loans; and the result of anything described in clauses (i) and (ii) above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining any LIBOR Loan, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under any of its notes issued pursuant hereto (if any) with respect thereto, then upon demand by such Lender, Borrower shall promptly pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is nine (9) months prior to the date on which such Lender first made demand therefor (except that, if the occurrence giving rise to such increased cost or reduction is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

2.6 Letters of Credit. Subject to and in accordance with the terms and conditions contained herein and in Annex A, Borrower shall have the right to request, and Lenders agree to incur, or purchase participations in, Letter of Credit Obligations in respect of Borrower and its Subsidiaries.

2.7 General Provisions Regarding Payment. Borrower shall make each payment under this Agreement not later than 3:00 p.m. on the day when due in immediately available funds in Dollars to a designated deposit account at Agent with respect to which Agent provides prior notice to Borrower from time to time (the "Designated Payment Account"). For purposes of computing interest and Fees and determining Borrowing Availability as of any date, all such payments shall be deemed received on the Business Day on which immediately available funds therefor are received (a) in Borrower's Collection Account during such period that funds are being applied against the Revolving Loan under clause (c) of Annex B attached or (b) at all other times, the Designated Payment Account, prior to 1:00 p.m. Payments received after 1:00 p.m. on any Business Day or on a day that is not a Business Day shall be deemed to have been received on the following Business Day so long as such payments are in immediately available funds. As an accommodation to Borrower, on the date any payment of interest or principal of any Advance or any Fee, charge or other Obligation is due (or is otherwise payable in accordance with the terms, conditions and procedures of Agent's automatic sweep program, as applicable), Agent is hereby irrevocably authorized, in its discretion, to debit the Disbursement Account and to charge such amounts to the Loan Account as a Revolving Credit Advance made as a Base Rate Loan.

2.8 Loan Account. Agent shall maintain a loan account (the "Loan Account") on its books in accordance with the Register to record all Advances, all payments made by Borrower, and all other debits and credits as provided in this Agreement with respect to the Advances or any other Obligations. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded on Agent's most recent printout or other written statement, shall, absent manifest error, be

presumptive evidence of the amounts due and owing to Agent and Lenders by Borrower; *provided*, that any failure to so record or any error in so recording shall not limit or otherwise affect Borrower's duty to pay the Obligations. Agent shall render to Borrower a monthly accounting of transactions with respect to the Advances setting forth the balance of the Loan Account for the immediately preceding month. Unless Borrower notifies Agent in writing of any objection to any such accounting (specifically describing the basis for such objection), within 30 days after the date thereof, each and every such accounting shall be presumptive evidence of all matters reflected therein. Only those items expressly objected to in such notice shall be deemed to be disputed by Borrower.

## 2.9 Taxes.

(a) Gross-up for Taxes. All payments of principal and interest on the Advances and all other amounts payable hereunder or any other Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable Law. If any withholding or deduction from any payment to be made by any Loan Party hereunder or under any other Loan Document is required in respect of any Taxes pursuant to any applicable Law, then the applicable Loan Party will (i) pay directly to the relevant Governmental Authority the full amount required to be so withheld or deducted, (ii) promptly forward to Agent and any applicable Lender an official receipt or other documentation satisfactory to Agent or such Lender evidencing such payment to such authority, and (iii) if the Tax is an Indemnified Tax, pay to Agent for the account of Agent and each applicable Lender such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes. If any Indemnified Taxes are directly asserted against Agent or any Lender (or any of its Affiliates) with respect to a payment received hereunder or any other Loan Document or with respect to, or arising from, the obligations of the Loan Parties under any Loan Document, the Loan Parties shall jointly and severally indemnify Agent or such Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by Agent or such Lender and any reasonable, out-of-pocket expenses arising therefrom or with respect thereto (including reasonable, out-of-pocket attorneys' or tax advisor fees and expenses), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive and binding absent manifest error.

(b) Interest and Penalties. If Borrower or any other applicable Loan Party fails to pay any Taxes when due to the appropriate taxing Governmental Authority or fails to remit to Agent, for the account of Agent and the respective Lenders, the required receipts or other required documentary evidence, Borrower and the other Loan Parties shall jointly and severally indemnify Agent and Lenders for any incremental Taxes, interest or penalties and reasonable, out-of-pocket costs and expenses (including attorneys' and tax advisor fees and expenses) that may become payable by Agent or any Lender (or any of its Affiliates) as a result of any such failure.

(c) Withholding Documentation. Each Lender that is organized under the Laws of a jurisdiction other than the United States and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 12.6(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a “Foreign Lender”) shall execute and deliver to each of Borrower and Agent (as Borrower or Agent may reasonably request) one or more United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8BEN-E, or W-8IMY (with applicable attachment), as applicable, and other applicable forms, certificates or documents prescribed by the United States Internal Revenue Service or reasonably requested by Agent certifying as to such Lender’s entitlement to an exemption from, or reduction of, withholding or deduction of U.S. federal withholding Taxes. Each Lender that is a U.S. Person on the Closing Date or purports to become an assignee of an interest pursuant to Section 12.6(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall execute and deliver to each of Borrower and Agent (as Borrower or Agent may reasonably request) one or more United States Internal Revenue Service Form W-9. In addition, 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 Borrower and Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower or 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 Borrower or Agent as may be necessary for Borrower and 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. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Agent in writing of its legal inability to do so.

(d) Treatment of Certain Refunds. If any Lender or Agent determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.9 (including by the payment of additional amounts pursuant to this Section 2.9(d)), it shall, so long as no Event of Default is occurring, pay to Borrower 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 Lender, Agent or their respective Affiliates and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Loan Parties, upon the request of such indemnified party, shall repay to such Lender or Agent the amount paid over pursuant to this Section 2.9(d) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Lender, Agent or their respective Affiliates is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.9(d), in no event will any Lender or Agent be required to pay any amount to a Loan Party pursuant to this Section 2.9(d) the payment of which would place such Person (or its Affiliates) in a less favorable net after-Tax position than such Person (or its Affiliates) would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.9(d) shall not be construed to require any Lender, Agent, or their Affiliates to make

available its respective Tax returns (or any other information relating to its Taxes that it deems confidential) to a Loan Party or any other Person.

(e) Usage of Terms. For the purposes of this Section 2.9 and the definitions of Excluded Tax, Indemnified Tax, Taxes, and Other Taxes used therein, “Lender” means any Lender, Swing Line Lender, L/C Issuer, and, subject to Section 12.6(b), any Participant.

2.10 Capital Adequacy. If any Lender shall reasonably determine that any Change in Law has or would have the effect of reducing the rate of return on such Lender’s or such controlling Person’s capital as a consequence of such Lender’s obligations hereunder or under any Letter of Credit to a level below that which such Lender or such controlling Person could have achieved but for such Change in Law, then from time to time, upon demand by such Lender, Borrower shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is nine (9) months prior to the date on which such Lender first made demand therefor (except that, if the occurrence giving rise to such increased cost or reduction is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

2.11 Mitigation Obligations. If any Lender requests compensation under either Section 2.5(e) or Section 2.10, or requires Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.9, then, upon the written request of Borrower, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Advances hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 12.6) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (b) would not subject such Lender to any unreimbursed cost or expense, and (c) would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Without limitation of the provisions of Section 10.1, Borrower hereby agrees to pay all costs and expenses incurred by any Lender in connection with any such designation or assignment.

#### 2.12 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 12.5(d).

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 9 of this Agreement or otherwise) or received by Agent from a Defaulting Lender pursuant to a right of setoff available with respect to such Defaulting Lender shall be applied at such time or times as may be determined by Agent as

follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any L/C Issuer or Swing Line Lender hereunder; *third*, to cash collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with this Agreement; *fourth*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Advance in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Agent; *fifth*, if so determined by Agent and Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Advances under this Agreement and (y) cash collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuers or Swing Line Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Advances or Letter of Credit Obligations in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Advances were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 8.2 were satisfied or waived, such payment shall be applied solely to pay the Advances of, and Letter of Credit Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Advances of, or Letter of Credit Obligations owed to, such Defaulting Lender until such time as all Advances and funded and unfunded participations in Letter of Credit Obligations and Swing Line Advances are held by the Lenders pro rata in accordance with the Revolving Loan Commitments without giving effect to clause (iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Fees.

(A) No Defaulting Lender shall be entitled to receive any Fee (other than its portion of the Letter of Credit Fee) for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such Fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive its portion of the Letter of Credit Fee for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided cash collateral pursuant to this Agreement.

(C) With respect to any Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Obligations or Swing Line Advances that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each L/C Issuer and Swing Line Lender, as applicable, the amount of any such Fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such Fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letter of Credit Obligations and Swing Line Advances shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Revolving Loan Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Loan Commitment. Subject to Section 12.17, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Advances. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, Borrower shall, without prejudice to any right or remedy available to it hereunder or under Law, (x) first, prepay Swing Line Advances in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, cash collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in this Agreement.

(b) Defaulting Lender Cure. If Borrower, Agent and each Swing Line Lender and L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Advances of the other Lenders or take such other actions as Agent may determine to be necessary to cause the Advances and funded and unfunded participations in Letters of Credit and Swing Line Advances to be held pro rata by the Lenders in accordance with the Revolving Loan Commitments (without giving effect to paragraph (a)(iv) above), whereupon, such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to Fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.



(c) New Swing Line Advances/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) no Swing Line Lender shall be required to fund any Swing Line Advances unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Line Loan and (ii) no L/C Issuer shall be required to issue, extend, increase, reinstate or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(d) One Lender. Any provisions herein relative to multiple Lenders shall apply only to the extent there is more than one (1) Lender party to the Agreement.

2.13 Notes. Any Lender may request that Advances made by it be evidenced by a promissory note (a “Note”). In such event, Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by Agent. Thereafter, subject to Section 2.8, the Advances evidenced by such Notes and interest thereon shall at all times (including after assignment pursuant to Section 12.6) be represented by one or more Notes in such form payable to the order of the payee named therein (or, if any such Note is a registered note, to such payee and its registered assigns).

2.14 Revolving Credit Advances for Presentments. As of the Closing Date, Borrower has elected, in accordance with Agent’s (and, if applicable, each Affiliate of Agent’s) policies, Bank Products and procedures, to receive automatic Revolving Credit Advances in the Disbursement Account to satisfy each of the Presentments (as defined below) in such Disbursement Account (or, if established by Borrower after the Closing Date, any Controlled Disbursement Accounts), any wire transfers initiated by Borrower out of such Disbursement Account (“Wire Transfers”, and any automated clearinghouse funds transfers (“ACH Transfers”) initiated by Borrower out of such Disbursement Account, all as provided in this Section 2.14 and subject, in all cases, to the other terms and conditions of this Agreement and all Bank Product agreements. Accordingly, Borrower hereby irrevocably authorizes Agent, without any further written or oral request of Borrower (including a Notice of Borrowing as provided in Sections 2.1(a)), to make Revolving Credit Advances automatically in amounts necessary for the payment of (a) any checks and other items drawn on, and any debits by Agent of, the Disbursement Account (or, if established by Borrower after the Closing Date, any Controlled Disbursement Accounts) as such checks and other items (“Presentments”) are presented to Agent or any of its Affiliates for payment, and any debits are made by Agent, (b) Wire Transfers, and (c) any ACH Transfers initiated by Borrower out of the Disbursement Account, in each case in excess of the available funds then in the Disbursement Account for such Presentments, Wire Transfers, and ACH Transfers. Each such Revolving Credit Advance made by Agent will be deemed to be a Swing Line Advance requested by Borrower for all purposes of this Agreement and is hereby ratified and approved by Borrower; provided, that under no circumstances will Agent have any obligation to make any such Revolving Credit Advance to pay any Presentments, Wire Transfers or ACH Transfers if (i) such Revolving Credit Advance would result in an Overadvance, (ii) any of the conditions in Section 8.2 have not been satisfied as to such Revolving Credit Advance, or (iii) the Revolving Loan Commitments have terminated in accordance with this Agreement. Notwithstanding anything to the contrary in this Section 2.14, Agent may, in its discretion, at any time hereafter upon written notice to Borrower, elect to discontinue the making of automatic Revolving Credit Advances to the Disbursement Account as provided in this Section 2.14, including if Borrowing Availability is less than 10% of Availability. Furthermore, Agent reserves the right to discontinue providing its Bank Products which provide for the

making of automatic advances to the deposit accounts of its customers maintained at Agent, including Borrower.

2.15 Increase of Revolving Loan Commitments; Additional Lenders.

(a) From time to time after the Closing Date, Borrower may, upon at least 30 days' written notice to Agent (which shall promptly provide a copy of such notice to each Lender), prior to the Commitment Termination Date, request an increase in the Revolving Loan Commitments (an "Increase"); *provided*, that, (i) the aggregate amount of all such Increases shall not exceed \$20,000,000 and (ii) Borrower may not obtain an Increase more than three (3) times during the then-existing term of this Agreement. Any such Increase shall be in an amount not less than \$5,000,000 individually and integral multiples of \$1,000,000 in excess of that amount. Each such notice shall specify the date (each, an "Increased Amount Date") on which Borrower proposes that the Increase shall be effective, which shall be a date not less than 30 days after the date on which such notice is delivered to Agent. Each Lender shall have the right for a period of 15 days following receipt of such notice, to elect by written notice to Borrower and Agent to increase its Revolving Loan Commitment by a principal amount equal to its Pro Rata Share of the applicable Increase. Any Lender who fails to respond to any such shall be deemed to have elected to not participate in any such Increase. No Lender (or any successor thereto) shall have any obligation to make any Increase, and any decision by a Lender to make an Increase shall be made in its sole discretion independently from any other Lender. Any fees payable by Borrower in connection with any Increase shall relate solely to the increase to the Revolving Loan Commitment and not to Advances outstanding or Revolving Loan Commitments available prior to the Increased Amount Date.

(b) If any Lender shall not elect to make an Increase pursuant to subsection (a) of this Section 2.15, Borrower may designate another bank, investment fund or other institution which at the time agrees to become a party to this Agreement (an "Additional Lender") and to provide some or all of the shortfall; *provided*, that any Additional Lender must be acceptable to Agent, which acceptance will not be unreasonably withheld or delayed.

(c) Such Increase shall become effective as of such Increased Amount Date; *provided*, that (1) no Default or Event of Default shall exist on such Increased Amount Date before and after giving effect to such Increase; (2) both before and after giving effect to any Increase, each of the conditions set forth in Section 8.2 shall be satisfied; (3) both immediately before and after giving effect to such Increase on a pro forma basis, the Loan Parties shall be in compliance with the financial covenants set forth in Section 6.1 (assuming the Increase is fully drawn on the Increased Amount Date); (4) such Increase shall be effected pursuant to one or more supplements or joinders in form and substance reasonably satisfactory to Agent executed by Borrower and by each Additional Lender and by each other Lender who has agreed to make an Increase, setting forth the Increase of such Lenders and setting forth the agreement of each Additional Lender to become a party to this Agreement and to be bound by all the terms and provisions hereof (including the requirements set forth in Section 8.2), together with promissory notes evidencing such Increase, if requested by such Lender or Additional Lender, and such evidence of appropriate corporate authorization on the part of Borrower with respect to the Increase and such opinions of counsel for Borrower with respect to the Increase as Agent may reasonably request; (5) Borrower shall deliver calculations evidencing pro forma compliance with the

calculations contained in Section 6.1 for the 12 month period following the Increased Amount Date (and, in the case of an Increase, assuming the Increase is fully drawn on the Increased Amount Date); and (6) Borrower shall deliver or cause to be delivered any other documents reasonably requested by Agent in connection with any such transaction.

(d) On any Increased Amount Date, subject to the satisfaction of the terms and conditions set forth in the foregoing clauses (a), (b) and (c), (i) each Additional Lender severally agrees to make its portion of the Revolving Loan Commitment to Borrower and each Advance made under the Increase shall be deemed, for all purposes, to be part of the Revolving Credit Advances hereunder, and (ii) each Additional Lender providing an Increase shall become a Lender hereunder with respect to the Increase and all matters relating thereto.

### **3. REPRESENTATIONS AND WARRANTIES**

To induce Lenders to make the Advances and to incur Letter of Credit Obligations, the Loan Parties executing this Agreement, jointly and severally, make the following representations and warranties to Agent and each Lender, as of the Closing Date and as of the date of the making of each Revolving Loan (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date, in which case, each such Loan Party makes such representations and warranties as of such earlier date), each and all of which shall survive the execution and delivery of this Agreement.

3.1 Existence and Power. Each Loan Party and each Subsidiary is an entity as specified on Schedule 3.1, is duly organized, validly existing and in good standing under the Laws of the jurisdiction specified on Schedule 3.1, has the same legal name as it appears in the Organizational Documents of such Loan Party or any Subsidiary and an organizational identification number (if any), in each case as specified on Schedule 3.1, and has all powers and all governmental licenses, authorizations, registrations, permits, consents and approvals required under all applicable Laws and required in order to carry on its business as now conducted (collectively, “Permits”), except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect. Each Loan Party and each Subsidiary is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, neither any Loan Party nor any Subsidiary has had, over the five (5) year period preceding the Closing Date, any name other than its current name or was incorporated or organized under the Laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Loan Party and each Subsidiary of the Loan Documents to which it is a party are within its powers, have been duly authorized by all necessary action pursuant to its Organizational Documents, require no further action by or in respect of, or filing with, any Governmental Authority and do not violate, conflict with or cause a breach or a default under (a) any Law, (b) any of the Organizational Documents of any Loan Party or any Subsidiary or (c) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to each of clauses (a) and (c), reasonably be expected to have a Material Adverse Effect.

3.3 Binding Effect. Each of the Loan Documents to which any Loan Party or any Subsidiary is a party constitutes a valid and binding agreement or instrument of such Loan Party or such Subsidiary, as applicable, enforceable against such Loan Party or such Subsidiary in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

3.4 Capitalization. The authorized Stock of each Loan Party and each Subsidiary as of the Closing Date is as set forth on Schedule 3.4. All issued and outstanding Stock of each Loan Party and each Subsidiary is duly authorized and validly issued (and, as applicable, fully paid and non-assessable) free and clear of all Liens other than those in favor of Agent for the benefit of Agent and Lenders, and such Stock was issued in compliance with all applicable Laws. The identity of the holders of the Stock of each Loan Party and each Subsidiary and the percentage of their actual and fully diluted ownership of the Stock of each Loan Party and each Subsidiary, in each case as of the Closing Date, is set forth on Schedule 3.4. No shares of the Stock of any Loan Party or any Subsidiary, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Loan Party or any Subsidiary of any Stock of any such entity.

### 3.5 Financial Information.

(a) Audited Statements. The consolidated balance sheet of Borrower and its Subsidiaries as of December 28, 2019 and the related consolidated statements of operations, stockholders' equity (or comparable calculation, if such Person is not a corporation) and cash flows for the Fiscal Year then ended, reported on by an independent certified public accounting firm of national standing acceptable to Agent, copies of which have been delivered to Agent prior to the Closing Date, fairly present in all material respects, in conformity with GAAP, the consolidated financial position of Borrower and its Subsidiaries as of such date and their consolidated results of operations, changes in stockholders' equity (or comparable calculation) and cash flows for such period.

(b) Unaudited Statements. The unaudited consolidated balance sheet of Borrower and its Subsidiaries as of September 30, 2020 and the related unaudited consolidated statements of operations and cash flows for the 9 months then ended, copies of which have been delivered to Agent, fairly present in all material respects, in conformity with GAAP, the consolidated financial position of Borrower and its Subsidiaries as of such date and their consolidated results of operations and cash flows for the 9 months then ended (subject to normal year-end adjustments and the absence of required footnote disclosures).

(c) Pro Forma Balance Sheet. The pro forma balance sheet of Borrower and its Subsidiaries as of September 30, 2020, a copy of which has been delivered to Agent, fairly presents in all material respects, on a basis consistent with the Financial Statements referred to in Section 7.1, the consolidated financial position of Borrower and its Subsidiaries as of such date, adjusted to give effect (as if such events had occurred on such date) to (i) the making of any Advances and the issuance of any Letters of Credit to be made on the Closing Date, (ii) the application of the proceeds therefrom as contemplated by the Loan Documents, and (iii) the payment of all legal, accounting and other fees

related thereto to the extent known at the time of the preparation of such balance sheet. As of the date of such balance sheet and the date hereof, no Loan Party or any Subsidiary had or has any material liabilities, contingent or otherwise, including liabilities for Taxes, long term leases or forward or long term commitments, which are not properly reflected on such balance sheet.

(d) Projections. The Projections delivered on or before the date hereof have been prepared by Borrower and its Subsidiaries in light of the past operations of its businesses, but including future payments of known contingent liabilities, and reflect projections for the four (4) year period beginning on January 1, 2020 and ending no sooner than the last day of the original term hereof, on a month-by-month basis for the first year and on a year-by-year basis thereafter. The Projections are based upon the same accounting principles as those used in the preparation of the Financial Statements described above and the estimates and assumptions stated therein, all of which Borrower believes to be reasonable and fair in light of current conditions and current facts known to any Loan Party and, as of the Closing Date, reflect Borrower's good faith and reasonable estimates of the future financial performance of Borrower and its Subsidiaries for the period set forth therein. The Projections are not a guaranty of future performance, especially in light of the current COVID-19 pandemic, and actual results may differ from the Projections.

(e) Borrowing Base Certificate. The information contained in the most recently delivered Borrowing Base Certificate is true, complete and correct.

(f) No Material Adverse Change. Since December 28, 2019, there has been no Material Adverse Change in the business, operations, properties, prospects or condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole that has not been previously disclosed to Agent, including discussions on the past and future effects of the COVID-19 pandemic.

3.6 Litigation. Except as disclosed in Schedule 3.6, there are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of each Loan Party, threatened, at Law, in equity, in arbitration or before any Governmental Authority, against any Loan Party, any Subsidiary or any of their respective properties which:

(a) purport to affect or pertain to this Agreement, any other Loan Document, or any of the transactions contemplated hereby or thereby; or

(b) would reasonably be expected to result in Material Adverse Effect; or

(c) seek an injunction or other equitable relief which would reasonably be expected to have a Material Adverse Effect.

No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided. As of the Closing Date, neither any Loan Party nor any Subsidiary is the subject of an audit or, to each Loan Party's knowledge, any review or investigation by any Governmental

Authority (excluding the IRS and other taxing authorities) concerning the violation or possible violation of any requirement of Law.

3.7 Ownership of Property. Each Loan Party and each Subsidiary is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person, except as may have been disposed of in the Ordinary Course of Business or otherwise in compliance with the terms hereof.

3.8 No Default. No Default or Event of Default has occurred and is continuing.

3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Loan Party's knowledge, threatened against any Loan Party or any Subsidiary, except workers' compensation claims made in the ordinary course of business. All payments due from the Loan Parties and the Subsidiaries, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

3.10 Regulated Entities. Neither any Loan Party nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

3.11 Margin Regulations. None of the proceeds from the Advances have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any Margin Stock or for any other purpose which would reasonably be expected to cause any of the Advances to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Laws Generally. Each Loan Party and each Subsidiary is in compliance with the requirements of all applicable Laws in all material respects.

(b) Foreign Assets Control Regulations and Anti-Money Laundering. Each Loan Party and each Subsidiary is in compliance in all material respects with all U.S. economic sanctions Laws, executive orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. Neither any Loan Party nor any Subsidiary or Affiliate of a Loan Party (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the target of U.S. economic

sanctions Laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person, or (iii) is controlled by (including by virtue of such person being a director (or manager) or owning voting shares, units or other interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. Law.

(c) USA Patriot Act. Each Loan Party, each Subsidiary and each of their Affiliates is in compliance with (i) the Trading with the Enemy Act, and each of the foreign assets control regulations of the U.S. Treasury Department and any other enabling legislation or executive order relating thereto, (ii) the USA Patriot Act, and (iii) other federal or state Laws relating to “*know your customer*” and anti-money laundering rules and regulations. No part of the proceeds of any Advance will be used directly or indirectly for any payments to any government 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.

(d) None of the funds of any Loan Party or any Subsidiary that are used to repay any obligation under this Agreement or any other Loan Document shall constitute property of, or shall be beneficially owned directly or indirectly by, any Person that is the subject of Sanctions.

3.13 Taxes. All federal and all other material Tax returns, reports and statements required to be filed by or on behalf of each Loan Party and each Subsidiary have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest. All Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof owing by a Loan Party or a Subsidiary have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, except to the extent subject to a Permitted Contest. Each of the Loan Parties is solely a resident for Tax purposes of the United States and has no office, branch or permanent establishment outside of the United States.

#### 3.14 Compliance with ERISA.

(a) ERISA Plans. Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy the requirements of, applicable Law including ERISA and the IRC in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the IRC is so qualified, and the IRS has issued a favorable determination or opinion letter with respect to each such ERISA Plan which may be relied on currently. No Loan Party or any Subsidiary has incurred liability for any material excise tax under any of Sections 4971 through 5000A of the IRC.

(b) Pension Plans and Multiemployer Plans. During the thirty-six (36) month period prior to the Closing Date or the making of any Advance or the issuance of any Letter of Credit, (i) no steps have been taken to terminate any Pension Plan that could reasonably be expected to result in a material payment liability to any Loan Party or any Subsidiary and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under ERISA or the IRC.

Except as set forth on Schedule 3.14(b), no Loan Party is party to or contributes to a Multiemployer Plan. No condition exists or event or transaction has occurred with respect to any ERISA Plan which could result in the incurrence by any Loan Party or any Subsidiary of any material liability, fine, Tax or penalty. Neither any Loan Party nor any Subsidiary has incurred liability to the PBGC (other than for current premiums) with respect to any Pension Plan.

3.15 Brokers. Except for fees contractually incurred by a Loan Party or an Affiliate of a Loan Party and payable in full on or prior to the Closing Date, neither any Loan Party nor any Affiliate of a Loan Party has any obligation to any broker, finder or other intermediary in respect of any finder's or brokerage fees in connection with any Loan Document.

3.16 Material Contracts. Except for the Organizational Documents and the Material Contracts set forth on Schedule 3.16, as of the Closing Date there are no (i) employment agreements covering the management of any Loan Party or any Subsidiary, (ii) collective bargaining agreements or other labor agreements covering any employees of any Loan Party or any Subsidiary, (iii) agreements for managerial, consulting or similar services to which any Loan Party or any Subsidiary is a party or by which it is bound, (iv) agreements regarding any Loan Party or any Subsidiary, its assets or operations or any investment therein to which any of its equity holders is a party or by which it is bound, (v) real estate leases, Intellectual Property licenses or other lease or license agreements to which any Loan Party or any Subsidiary is a party, either as lessor or lessee, or as licensor or licensee, or (vi) customer, distribution, marketing or supply agreements to which any Loan Party or any Subsidiary is a party, (vii) partnership agreements to which any Loan Party is a general partner or joint venture agreements to which any Loan Party is a party, or (viii) any other agreements or instruments to which any Loan Party or any Subsidiary is a party, the breach, nonperformance or cancellation of which, or the failure of which to renew could reasonably be expected to have a Material Adverse Effect. Schedule 3.16 sets forth, with respect to each real estate lease agreement to which any Loan Party or any Subsidiary is a party as of the Closing Date, the address of the subject property and the annual rental (or, where applicable, a general description of the method of computing the annual rental). The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Loan Party or any Subsidiary).

3.17 Environmental Compliance.

(a) Hazardous Materials. Except in each case as set forth on Schedule 3.17, (i) no Hazardous Materials are located on any properties now or previously owned, leased or operated by any Loan Party or any Subsidiary or have been released into the environment, or deposited, discharged, placed or disposed of, at, on, under or near any of such properties in a manner that would require the taking of any action under any Environmental Law, and any such action under any Environmental Law has given rise to, or could reasonably be expected to give rise to, remediation costs and expenses on the part of the Loan Parties in excess of \$1,000,000; (ii) no portion of any such property is being used, or has been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Materials in violation of any Environmental Law nor is any such property affected by any Hazardous Materials Contamination; and (iii) all oral or written notifications of a release of Hazardous Materials required to be filed by or on behalf of any Loan Party or any Subsidiary under any applicable



Environmental Law have been filed or are in the process of being timely filed by or on behalf of the applicable Loan Party or Subsidiary except for any of the foregoing in subclauses (ii) and (iii) that, either individually or in the aggregate as to all Loan Parties, could not reasonably be expected to result in a Material Adverse Effect.

(b) Notices Regarding Environmental Compliance. Except in each case as set forth on Schedule 3.17, no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or, to any Loan Party's knowledge, threatened by any Governmental Authority or other Person with respect to, in any such case, any (i) alleged violation by any Loan Party or any Subsidiary of any Environmental Law, (ii) alleged failure by any Loan Party or any Subsidiary to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials except for any of the foregoing that, either individually or in the aggregate as to all Loan Parties, could not reasonably be expected to result in a Material Adverse Effect.

(c) Properties Requiring Remediation. Except in each case as set forth on Schedule 3.17, no property now owned or leased by any Loan Party or any Subsidiary and, to the knowledge of each Loan Party, no such property previously owned or leased by any Loan Party or any Subsidiary, to or from which any Loan Party or any Subsidiary has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, in any case, is listed or, to any Loan Party's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of any Loan Party, other investigations which may lead to claims against any Loan Party or any Subsidiary for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, but not limited to, claims under CERCLA except for any of the foregoing that, either individually or in the aggregate as to all Loan Parties, could not reasonably be expected to result in a Material Adverse Effect.

(d) Underground Storage Tanks. Except in each case as set forth on Schedule 3.17, there are no underground storage tanks located on any property owned or leased by any Loan Party or any Subsidiary that are not properly registered or permitted under applicable Environmental Laws or that are leaking or disposing of Hazardous Materials except for any of the foregoing that, either individually or in the aggregate as to all Loan Parties, could not reasonably be expected to result in a Material Adverse Effect.

(e) Environmental Liens. Except in each case as set forth on Schedule 3.17, there are no Liens under or pursuant to any applicable Environmental Laws on any real property or other assets owned or leased by any Loan Party or any Subsidiary, and no actions by any Governmental Authority have been taken or, to the knowledge of any Loan Party, are in process which could subject any of such properties or assets to such Liens.

For purposes of this Section 3.17, each Loan Party and each Subsidiary shall be deemed to include any business or business entity (including a corporation) which is, in whole or in part, a predecessor of such Loan Party or such Subsidiary.

3.18 Intellectual Property. Except as set forth on Schedule 3.18, each Loan Party and each Subsidiary owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the condition (financial or other), business or operations of such Loan Party or such Subsidiary, as applicable. All such Intellectual Property existing as of the Closing Date and registered with any United States or foreign Governmental Authority is set forth on Schedule 3.18. All Intellectual Property of each Loan Party and each Subsidiary is fully protected and/or duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances. Except as set forth on Schedule 3.18, to each Loan Party's knowledge, each Loan Party and each Subsidiary conducts its business without infringement or claim of infringement of any Intellectual Property rights of others, and there is no infringement or claim of infringement by others of any Intellectual Property rights of any Loan Party or any Subsidiary, which infringement or claim of infringement could reasonably be expected to result in a Material Adverse Effect.

3.19 Real Property Interests. Schedule 3.19 sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property and the annual rental (or, where applicable, a general description of the method of computing the annual rental). Except for leasehold interests and ownership or other interests set forth on Schedule 3.19, neither any Loan Party nor any Subsidiary has, as of the Closing Date, any ownership, leasehold or other interest in real property.

3.20 Full Disclosure. None of the information (financial or otherwise) furnished by or on behalf of any Loan Party or any Subsidiary to Agent or any Lender in connection with the consummation of the transactions contemplated by the Loan Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All Projections delivered to Agent and Lenders have been prepared on the basis of the assumptions stated therein. Such Projections represent the Loan Parties' good faith estimate of the future financial performance of the Loan Parties and their respective Subsidiaries and such assumptions are believed by the Loan Parties to be fair and reasonable in light of current business conditions; *provided*, that the Loan Parties can give no assurance that such Projections will be attained. As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

3.21 Reserved.

3.22 Use of Proceeds. Borrower shall use the proceeds of the Advances solely as follows: (a) to refinance, on the Closing Date, the Prior Lender Obligations, (b) to pay costs and expenses required to be paid pursuant to Section 10.1, (c) to fund Permitted Acquisitions, and (d) for working capital, capital expenditures and other general corporate and, as applicable, limited liability company purposes not in contravention of any requirement of Law and not in violation of this Agreement or the other Loan Documents.

3.23 Insurance. Schedule 3.23 lists all insurance policies of any nature maintained, as of the Closing Date, for current occurrences by each Loan Party and each Subsidiary, as well as a summary of the terms of each such policy. Each Loan Party and each Subsidiary thereof currently maintains all insurance that is required to be maintained pursuant to Section 4.4 hereof.

3.24 Deposit and Disbursement Accounts. Schedule 3.24 lists all banks and other financial institutions at which any Loan Party or any Subsidiary maintains deposit or other accounts as of the Closing Date and Schedule 3.24 correctly identifies the name, address and telephone number of each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

3.25 Government Contracts. Except as set forth in Schedule 3.25, as of the Closing Date, neither any Loan Party nor any Subsidiary is a party to any contract or agreement with any Governmental Authority and neither any Loan Party's nor any Subsidiary's Accounts are subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state or local Law.

3.26 Customer and Trade Relations. As of the Closing Date, there exists no actual or, to the knowledge of any Loan Party, threatened termination or cancellation of, or any Material Adverse Modification or Material Adverse Change in: (a) the business relationship of any Loan Party or any Subsidiary with any customer or group of customers whose purchases during the preceding 12 months caused them to be ranked among the ten largest customers of such Loan Party or such Subsidiary; or (b) the business relationship of any Loan Party or any Subsidiary with any supplier essential to its operations.

3.27 Bonding; Licenses. Except as set forth on Schedule 3.27, as of the Closing Date, neither any Loan Party nor any Subsidiary is a party to or bound by any surety bond agreement or bonding requirement with respect to products or services sold by it or any trademark or patent license agreement with respect to products sold by it.

3.28 Solvency. Both before and after giving effect to (a) the Advances and Letter of Credit Obligations to be made or incurred on the Closing Date or such other date as Advances and Letter of Credit Obligations requested hereunder are made or incurred, (b) the disbursement of the proceeds of such Advances pursuant to the instructions of Borrower, (c) the incurrence of the Term Loan Debt, and (d) the payment and accrual of all transaction costs in connection with the foregoing, each Loan Party is and will be Solvent.

#### **4. AFFIRMATIVE COVENANTS**

Each Loan Party executing this Agreement jointly and severally agrees that from and after the date hereof and until the Termination Date:

4.1 Maintenance of Existence and Conduct of Business. Each Loan Party shall and shall cause its Subsidiaries to: do or cause to be done all things necessary to preserve and keep in full force and effect its corporate and, as applicable, limited liability company or other organizational existence and its material rights and franchises; continue to conduct its business substantially as now conducted or as otherwise permitted hereunder; at all times maintain, preserve and protect all of its assets and properties used or useful in the conduct of its business, and keep the same in good repair, working order and condition in all material respects (taking into consideration ordinary wear and tear) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices; and transact business only in such corporate

(or, as applicable, limited liability company or other organizational) and trade names as are set forth in Schedule 4.1.

#### 4.2 Payment of Charges.

(a) Subject to Section 4.2(b), each Loan Party shall, and shall cause each of its Subsidiaries to, pay and discharge or cause to be paid and discharged promptly all Charges payable by it, including (i) Charges imposed upon it, its income and profits, or any of its property (real, personal or mixed) and all Charges with respect to Tax, social security and unemployment withholding with respect to its employees, excepting deferrals and credits allowed under the CARES Act, (ii) lawful claims for labor, materials, supplies and services or otherwise, and (iii) all storage or rental charges payable to warehousemen, processors and bailees, in each case, before any thereof shall become past due.

(b) To the extent the payment of any Charges, Taxes or claims are subject to a Permitted Contest, (i) no Lien shall be imposed to secure payment of such Charges, Taxes or claims (other than payments to warehousemen, processors and/or bailees subject to Agent's right to impose and maintain Reserves) that is superior to any of the Liens securing payment of the Obligations and such contest is maintained and prosecuted continuously and with diligence and operates to suspend collection or enforcement of such Charges, Taxes or claims, (ii) none of the Collateral becomes subject to forfeiture or loss as a result of such Charges, Taxes or claims; (iii) any Liens arising from such contested Charges, Taxes or claims do not secure amounts in excess of \$250,000 in the aggregate as of any date, and (iv) such Loan Party or such Subsidiary, as applicable, shall promptly pay or discharge such contested Charges, Taxes or claims and all additional charges, interest, penalties and expenses, if any, and shall deliver to Agent evidence reasonably acceptable to Agent of such compliance, payment or discharge, if (A) such contest is terminated or discontinued adversely to such Loan Party or such Subsidiary, or (B) the conditions set forth in this Section 4.2(b) are no longer met.

4.3 Books and Records. Each Loan Party shall, and shall cause each of its Subsidiaries to, keep adequate books and records with respect to its business activities in which proper entries, reflecting all financial transactions, are made in accordance with GAAP and on a basis consistent with the Financial Statements delivered to Agent on or prior to the Closing Date.

#### 4.4 Insurance; Damage to or Destruction of Collateral.

(a) The Loan Parties shall, and shall cause each of their Subsidiaries to, at their sole cost and expense, maintain the policies of insurance described on Schedule 3.23 as in effect on the date hereof or otherwise in form and amounts and with insurers reasonably acceptable to Agent. Such policies of insurance (or the lender's loss payable and additional insured endorsements delivered to Agent) shall contain provisions pursuant to which the insurer agrees to provide 30 days (or 10 days in the case of non-payment) prior written notice to Agent in the event of any non-renewal, cancellation or amendment of any such insurance policy. If any Loan Party or any such Subsidiary at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above or to pay all premiums relating thereto, Agent may at any time or times thereafter obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto that Agent deems advisable. Agent shall have no obligation to obtain insurance for any Loan Party or any Subsidiary or pay any premiums therefor. By doing so, Agent shall not be deemed to have waived any Default or

Event of Default arising from the failure of such Loan Party or such Subsidiary to maintain such insurance or pay any premiums therefor. All sums so disbursed, including reasonable attorneys' fees, court costs and other charges related thereto, shall be payable on demand for payment by Borrower to Agent on its demand for payment and shall be additional Obligations hereunder secured by the Collateral.

(b) Agent reserves the right at any time upon any material change in the risk profile of any Loan Party or any Subsidiary (including any change in the product mix maintained by any Loan Party or any Subsidiary or any Laws affecting the potential liability of such Loan Party or such Subsidiary) to require additional forms and limits of insurance to, in Agent's opinion, adequately protect both Agent's and Lenders' interests in all or any portion of the Collateral and to ensure that each Loan Party and Subsidiary is protected by insurance in amounts and with coverage customary for its industry. If reasonably requested by Agent, each Loan Party shall deliver to Agent from time to time a report of a reputable insurance broker reasonably satisfactory to Agent, with respect to its insurance policies.

(c) Each Loan Party shall deliver to Agent, in form and substance reasonably satisfactory to Agent, endorsements to (i) all special form ("all risk") property and casualty insurance and business interruption insurance naming Agent, on behalf of itself and Lenders, as lender loss payee, and (ii) all general liability and other liability policies naming Agent, on behalf of itself and Lenders, as additional insured. For any insurance claims for loss, damage or destruction to the Collateral in excess of \$1,000,000, each Loan Party irrevocably makes, constitutes and appoints Agent (and all officers, employees or agents designated by Agent), so long as any Event of Default has occurred and is continuing, as each Loan Party's true and lawful attorney in fact for the purpose of making, settling and adjusting such claims under such special form policies of insurance, endorsing the name of each Loan Party on any check or other item of payment for the proceeds of such special form policies of insurance and for making all determinations and decisions with respect to such special form policies of insurance. Agent shall have no duty to exercise any rights or powers granted to it pursuant to the foregoing power-of-attorney. The Loan Parties shall promptly notify Agent of any loss, damage, or destruction to the Collateral in the amount of \$1,000,000 or more, whether or not covered by insurance.

4.5 Compliance with Laws. Each Loan Party shall, and shall cause each of its Subsidiaries to, comply with all federal, state, local and foreign Laws and regulations applicable to it, including ERISA, labor Laws, and Environmental Laws and Environmental Permits, except to the extent that the failure to comply, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Each Loan Party and each Subsidiary will maintain in effect policies and procedures reasonably designed to ensure compliance by them and their respective directors, officers, employees and agents with applicable Sanctions. Each Loan Party and each Subsidiary will comply with commercially reasonable requests by the Lender for information or documentation necessary to ensure that each Loan Party and Subsidiary is compliant with any applicable federal or state Laws and not engaged in any act or omission that would cause the Lender to be in breach of any applicable Law.

4.6 Supplemental Disclosure. From time to time as may be reasonably requested by Agent (which request will not be made more frequently than once each year absent the occurrence and continuance of an Event of Default) or at Loan Parties' election, the Loan Parties shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any

matter hereafter arising that, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein); *provided*, that (a) no such supplement to any such Schedule or representation shall amend, supplement or otherwise modify any Schedule or representation, or be or be deemed a waiver of any Default or Event of Default resulting from the matters disclosed therein, except as consented to by Agent and Required Lenders in writing, and (b) no supplement shall be required or permitted as to representations and warranties that relate solely to the Closing Date.

4.7 Intellectual Property. Each Loan Party will, and will cause each of its Subsidiaries to, conduct its business and affairs without infringement of or interference with any Intellectual Property of any other Person in any material respect and shall comply in all material respects with the terms of its Licenses.

4.8 Environmental Matters. Each Loan Party shall and shall cause each of its Subsidiaries to: (a) conduct its operations and keep and maintain its Real Estate in compliance with all Environmental Laws and Environmental Permits other than noncompliance that could not reasonably be expected to have a Material Adverse Effect; (b) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws and Environmental Permits pertaining to the presence, generation, treatment, storage, use, disposal, transportation or Release of any Hazardous Material on, at, in, under, above, to, from or about any of its Real Estate in all material respects; (c) notify Agent promptly after such Loan Party becomes aware of any violation of Environmental Laws or Environmental Permits or any Release on, at, in, under, above, to, from or about any Real Estate that is reasonably likely to result in Environmental Liabilities in excess of \$1,000,000; and (d) promptly forward to Agent a copy of any order, notice, request for information or any communication or report received by such Loan Party or such Subsidiary in connection with any such violation or Release or any other matter relating to any Environmental Laws or Environmental Permits that could reasonably be expected to result in Environmental Liabilities in excess of \$1,000,000 in each case whether or not the Environmental Protection Agency or any Governmental Authority has taken or threatened any action in connection with any such violation, Release or other matter. If Agent at any time has a reasonable basis to believe that there may be a violation of any Environmental Laws or Environmental Permits by any Loan Party or any Environmental Liability arising thereunder, or a Release of Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, that, in each case, could reasonably be expected to have a Material Adverse Effect, then each Loan Party shall, upon Agent's written request, but only if Borrower is not pursuing such at the request of any landlord or mortgage holder relative to such Real Estate, (i) cause the performance of such environmental audits including subsurface sampling of soil and groundwater, and preparation of such environmental reports, at the Loan Parties' expense, as Agent may from time to time reasonably request, which shall be conducted by reputable environmental consulting firms reasonably acceptable to Agent and shall be in form and substance reasonably acceptable to Agent, and (ii) permit Agent or its representatives to have access to all Real Estate for the purpose of conducting such environmental audits and testing as Agent deems appropriate, including subsurface sampling of soil and groundwater. The Loan Parties shall

reimburse Agent for the costs of such audits and tests and the same will constitute a part of the Obligations secured hereunder.

4.9 Landlords' Agreements, Mortgagee Agreements and Bailee and Processor Letters. Each Loan Party shall obtain a landlord's agreement, mortgagee agreement, bailee letter agreement or processor letter agreement, as applicable, from the lessor of each leased property, mortgagee of owned property, bailee or processor with respect to any warehouse, processor or converter facility or other location where Collateral is stored or located, which agreement or letter agreement shall contain a waiver or subordination of all Liens or claims that the landlord, mortgagee, bailee or processor may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to Agent. With respect to such locations or warehouse space leased, owned or used as of the Closing Date and thereafter, if Agent has not received a landlord's agreement, mortgagee agreement, bailee letter agreement or processor letter agreement, as applicable, as of the Closing Date (or, if later, as of the date such location is acquired or leased), Borrower's Eligible Inventory at that location shall, in Agent's Permitted Discretion, be excluded from the Borrowing Base or be subject to such Reserves as may be established by Agent in its sole discretion. Each Loan Party shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location, public warehouse or processor location where any Collateral is or may be located.

4.10 Reserved

4.11 Cash Management Systems. On or prior to the Closing Date, the Loan Parties will establish and will maintain until the Termination Date, the cash management systems described on Annex B (the "Cash Management Systems").

4.12 Maintenance of Property; Material Contracts. Except as permitted under Section 5.1, each Loan Party shall maintain, and shall cause each of its Subsidiaries to maintain, and preserve all its property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted and shall make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

4.13 Inspection of Property and Books and Records; Appraisals.

(a) Each Loan Party shall, and shall cause each of its Subsidiaries to, with respect to each owned, leased, or controlled property, during normal business hours and upon reasonable advance notice (unless an Event of Default shall have occurred and be continuing, in which event no notice shall be required and Agent shall have access at any and all times during the continuance thereof): (i) provide access to such property to Agent and any of its Related Persons, as frequently as Agent determines to be appropriate; and (ii) permit Agent and any of its Related Persons to conduct field examinations, audit, inspect and make extracts and copies from all of such Loan Party's books and records, and evaluate and make physical verifications of the Inventory and other Collateral in any manner and through any medium that Agent considers advisable, in each instance, at the Loan Parties' expense; *provided*, the Loan Parties shall (A) so long as no Event of Default has occurred and is

continuing, only be obligated to reimburse Agent for the expenses for two (2) such field examinations, audits and inspections per year (or a total of three (3) such field examinations, audits and inspections per year at any time during such year that Borrowing Availability is or has been less than 12.5% of Availability), and (B) be obligated to reimburse Agent for the expenses for each such field examination, audit and inspection required by Agent if an Event of Default has occurred and is continuing. Any Lender may accompany Agent or its Related Persons in connection with any inspection at such Lender's expense.

(b) Upon Agent's request from time to time, the Loan Parties shall permit and enable Agent to obtain appraisals in form and substance and from appraisers reasonably satisfactory to Agent stating the then Net Orderly Liquidation Percentage, or such other value as determined by Agent, of all or any portion of the Inventory of any Loan Party or any Subsidiary of any Loan Party; *provided*, that notwithstanding any provision herein to the contrary, the Loan Parties shall (i) so long as no Event of Default has occurred and is continuing, only be obligated to reimburse Agent for the expenses of such appraisals occurring one (1) time per year (or a total of two (2) times per year at any time during such year that Borrowing Availability is or has been less than 12.5% of Availability) and (ii) be obligated to reimburse Agent for the expenses for each such appraisal required by Agent if an Event of Default has occurred and is continuing.

4.14 Use of Proceeds. Borrower shall use the proceeds of the Advances solely as follows: (a) to refinance, on the Closing Date, the Prior Lender Obligations, (b) to pay costs and expenses required to be paid pursuant to Section 10.1, (c) to fund Permitted Acquisitions, and (d) for working capital, capital expenditures and other general corporate and, as applicable, limited liability company purposes not in contravention of any requirement of Law and not in violation of this Agreement or the other Loan Documents.

#### 4.15 Further Assurances.

(a) Each Loan Party shall, and shall cause each of its Subsidiaries to, ensure that all written information, exhibits and reports furnished to Agent or the Lenders do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not misleading in light of the circumstances in which made, and will promptly disclose to Agent and the Lenders and correct any defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof.

(b) Promptly upon request by Agent, the Loan Parties shall and, subject to the limitations set forth herein and in the Collateral Documents, shall cause each of their Subsidiaries to take such additional actions and execute such documents as Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests covered by any of the Collateral Documents, (iii) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Lenders the rights granted or now or hereafter intended to be granted to the Lenders under any Loan Document. Without limiting the generality of the foregoing and except as otherwise approved in writing



by Required Lenders, the Loan Parties shall cause each of their Subsidiaries and any Person formed or created as a result of a statutory division of a Loan Party, within thirty (30) days (or such longer period to which Agent consents in its sole discretion) after formation, creation or acquisition thereof, to guaranty the Obligations and to cause each such Person to grant to Agent, for the benefit of the Secured Parties, a security interest in such Person's property, subject to the limitations set forth herein and in the applicable Collateral Documents to secure such guaranty.

(c) The Loan Parties shall deliver, or cause to be delivered, to Agent, appropriate resolutions, secretary certificates, certified Organizational Documents and, if requested by Agent, legal opinions relating to the matters described in this Section 4.15 (which opinions shall be in form and substance reasonably acceptable to Agent and, to the extent applicable, substantially similar to the opinions delivered on the Closing Date), in each instance with respect to each Loan Party formed or acquired after the Closing Date.

(d) In addition to, and without limiting, any of the foregoing, promptly following any request therefor, the Loan Parties shall deliver, or cause to be delivered, to Agent: (i) such other information regarding the operations, material changes in ownership of Stock, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of this Agreement, as Agent or any Lender (through Agent) may reasonably request and (ii) information and documentation reasonably requested by Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

## 5. NEGATIVE COVENANTS

Each Loan Party executing this Agreement jointly and severally agrees as to all Loan Parties and all Subsidiaries that from and after the date hereof until the Termination Date:

5.1 Asset Dispositions, Etc. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, sell, assign, lease, convey, transfer, undergo a statutory division or otherwise dispose of (whether in one or a series of transactions) any Collateral (including Stock of any Subsidiary, whether in a public or a private offering or otherwise, and accounts and notes receivable, with or without recourse) or enter into any agreement to do any of the foregoing, except:

(a) dispositions in the Ordinary Course of Business to any Person other than an Affiliate of a Loan Party, of Inventory (*provided, however*, that a sale in the Ordinary Course of Business will not include a transfer in total or partial satisfaction of any liabilities);

(b) dispositions (other than of (i) the Stock of any Subsidiary of any Loan Party or (ii) any Accounts of any Loan Party) not otherwise permitted hereunder which are made for fair market value and the mandatory prepayment in the amount of net proceeds of such disposition is made if and to the extent required by Section 2.2(b); *provided*, that at the time of any disposition, no Event of Default shall exist or shall result from such disposition;

(c) dispositions of Cash Equivalents in the Ordinary Course of Business made to a Person that is not an Affiliate of any Loan Party and (ii) conversions of Cash Equivalents into cash or other Cash Equivalents; and

(d) to the extent permitted by Sections 5.2 or 5.8.

5.2 Investments; Loans and Advances. Except as otherwise expressly permitted by this Section 5.2, no Loan Party shall, nor shall it permit any of its Subsidiaries to, make or permit to exist any Investment in, or make, accrue or permit to exist loans or advances of money to, any Person, through the direct or indirect lending of money, holding of securities or otherwise, except that:

(a) each Loan Party and its Subsidiaries may hold investments comprised of notes payable, or stock or other securities issued by Account Debtors to such Loan Party or Subsidiary pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the Ordinary Course of Business, consistent with past practices;

(b) each Loan Party and its Subsidiaries may (i) maintain its existing Investments in its Subsidiaries made as of the Closing Date and (ii) make additional Investments after the Closing Date in its Subsidiaries that are Loan Parties, subject, in the case of intercompany Indebtedness, to compliance with Section 5.3(g);

(c) each Loan Party may maintain deposit and other accounts with Agent or a Lender;

(d) each Loan Party may consummate Permitted Acquisitions;

(e) so long as no Default or Event of Default has occurred and is continuing, the Loan Parties may maintain petty cash deposit accounts at one or more financial institutions, other than Agent or its Affiliates, up to a maximum ledger balance of \$100,000 in the aggregate at any time on deposit for all Loan Parties (the "Petty Cash Deposit Accounts") so long as, if requested by Agent, Borrower will, at the Loan Parties' sole cost and expense, cause each financial institution at which a Petty Cash Deposit Account is maintained to enter into a deposit account control agreement, on terms acceptable to Agent in its Permitted Discretion, if (i) the ledger balance in such Petty Cash Deposit Account exceeds \$100,000 at any time or (ii) a Default or Event of Default has occurred and is continuing;

(f) each Loan Party and each Subsidiary may make other Investments not exceeding \$1,000,000 in the aggregate for all of the Loan Parties and all of the Subsidiaries at any time outstanding; and

(g) the Loan Parties may maintain the Prior Lender Accounts subject to the terms of Annex B hereto.

### 5.3 Indebtedness.

No Loan Party shall, nor shall it permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, except (without duplication):

(a) Up to \$25,000,000 (the “Basket Borrowings”) of Indebtedness and Capital Leases, including the existing Indebtedness and Capital Leases listed on Schedule 5.3(a),

(b) the Advances and the other Obligations,

(c) unfunded employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded (or underfunded) under applicable Law,

(d) Indebtedness described as the “Exempt Borrowings” on Schedule 5.3(d) and refinancings, amendments or extensions thereof that do not have the effect of increasing the principal balances above the amounts shown on Schedule 5.3(d) and that are otherwise on terms and conditions not materially less favorable to any Loan Party or any Subsidiary, or Agent or any Lender, as determined by Agent, than the terms of the Indebtedness being refinanced, amended or extended;

(e) [Reserved];

(f) Unsecured Indebtedness of any Loan Party or any of its Subsidiaries arising from Seller Notes which constitute Subordinated Debt for all purposes of this Agreement; *provided*, that (v) all obligations under each Seller Note shall be unsecured and subordinated to the Obligations pursuant to subordination provisions reasonably satisfactory to Agent, (w) no Seller Note shall mature any earlier than 6 months following the latest maturity date of the Advances under this Agreement at the time of the issuance of such Seller Note, (x) no payments of principal or interest may be made pursuant to or under any Seller Notes prior to the latest maturity date of the Advances under this Agreement at the time of the issuance of the Seller Notes, (y) the terms and conditions applicable to any Seller Note (and any amendments thereto), shall be reasonably satisfactory to Agent, and (z) the aggregate principal amount of all Indebtedness outstanding under this Section 5.3(f) shall not at any time exceed \$1,000,000;

(g) to the extent constituting Indebtedness, Contingent Obligations permitted pursuant to Section 5.6;

(h) Indebtedness consisting of unsecured intercompany loans and advances made by Borrower to any other Loan Party or by any Guarantor to Borrower;

(i) Subordinated Debt (other than Seller Notes) not to exceed \$5,000,000 in the aggregate outstanding at any time;

(j) Term Loan Debt; and

(k) other unsecured Indebtedness not to exceed \$1,000,000 in the aggregate outstanding at any time.

#### 5.4 Employee Loans and Affiliate Transactions.

No Loan Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction with any Affiliate of such Loan Party or of any such Subsidiary, except:

(a) as expressly permitted by this Agreement;

(b) in the Ordinary Course of Business and pursuant to the reasonable requirements of the business of such Loan Party or Subsidiary upon fair and reasonable terms no less favorable to such Loan Party or Subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of Borrower or such Subsidiary and which are disclosed in writing to Agent, in each case, exclusive of any loans or advances except to the extent expressly permitted by Sections 5.3(g), 5.4(c) and 5.4(d);

(c) loans or advances to employees of any Loan Party or any Subsidiary for travel, entertainment and relocation expenses and other purposes in the Ordinary Course of Business not to exceed \$100,000 in the aggregate outstanding at any time as to all Loan Parties; and

(d) transactions with Affiliates existing as of the Closing Date and described in Schedule 5.4.

5.5 Capital Structure and Business. Except as expressly permitted under existing compensation plans, Section 5.8 or Section 5.13, no Loan Party shall, nor shall it permit any of its Subsidiaries to, make any material changes in its equity structure, issue any Stock or amend any of its Organizational Document in any material respect, in each case, in any respect adverse to Agent and Lenders. No Loan Party shall, nor shall it permit any of its Subsidiaries to, engage in any line of business materially different from those lines of business carried on by it on the Closing Date.

5.6 Contingent Obligations. No Loan Party shall, nor shall it permit any of its Subsidiaries to, create, incur, assume or permit to exist any Contingent Obligations except in respect of the Obligations and except:

(a) endorsements for collection or deposit in the Ordinary Course of Business;

(b) Rate Contract Obligations arranged by Agent or provided by any Lender or Affiliate thereof entered into for the sole purpose of hedging in the normal course of business, not for speculative purposes and consistent with industry practices;

(c) Contingent Obligations of the Loan Parties and their Subsidiaries existing as of the Closing Date and listed on Schedule 5.6, including extensions and renewals thereof which do not increase the amount of such Contingent Obligations or impose materially more restrictive or adverse terms on the Loan Parties and their Subsidiaries as compared to the terms of the Contingent Obligation being renewed or extended;

(d) Contingent Obligations arising under indemnity agreements to title insurers to cause such title insurers to issue title insurance policies;

(e) Contingent Obligations arising with respect to customary indemnification obligations in favor of (i) sellers in connection with Permitted Acquisitions and (ii) purchasers in connection with dispositions permitted under Section 5.1(b);

(f) Contingent Obligations arising under Letters of Credit;

(g) Contingent Obligations arising under guaranties made in the Ordinary Course of Business of obligations of any Loan Party or any Subsidiary, which obligations are otherwise permitted hereunder; *provided*, that if such obligation is subordinated to the Obligations, such guaranty shall be subordinated to the same extent; and

(h) Contingent Obligations under the Loan Documents.

5.7 Liens. No Loan Party shall, nor shall it permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on or with respect to its Accounts or any of its other properties or assets (whether now owned or hereafter acquired) except for the following:

(a) Permitted Encumbrances;

(b) Liens securing the Exempt Borrowings listed on Schedule 5.3(d) and permitted refinancings, amendments and extensions thereof; *provided*, that Lien does not attach to any other property; and

(c) Liens securing the Basket Borrowings listed on Schedule 5.3(b) or created after the date hereof by conditional sale or other title retention agreements (including Capital Leases) or in connection with purchase money Indebtedness with respect to Equipment and Fixtures acquired by any Loan Party in the Ordinary Course of Business, or in connection with financing, refinancing or acquisition of Real Estate, all involving the incurrence of an aggregate amount of Indebtedness and Capital Lease Obligations of not more than \$25,000,000 outstanding at any one time for all such Liens (*provided* that such Liens attach only to Real Estate owned or acquired, or to Equipment and Fixtures subject to purchase money debt and such purchase money debt is incurred within 20 days following such purchase and does not exceed 100% of the purchase price of the subject assets);

(d) Lien on property securing the Term Loan Debt as long as such Liens remain in compliance with the applicable Intercreditor Agreement;

(e) Subordinated Liens of bailees or landlords as long as such Liens remain in compliance with applicable Bailee Agreements or Landlord Agreements.

In addition, no Loan Party shall, nor shall it permit any of its Subsidiaries to, become a party to any agreement, note, indenture or instrument, or take any other action, that would prohibit the creation of a Lien on any of the Collateral in favor of Agent, for the benefit of the Secured Parties.

5.8 Consolidations and Mergers. No Loan Party shall, nor shall it permit any of its Subsidiaries to, merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person or undergo any statutory division, except (a) as expressly permitted by Section 5.1 and (b) upon not less than 15 Business Days prior written notice to Agent, any Subsidiary of Borrower may merge with, dissolve or liquidate into (in each case in accordance with applicable Law) Borrower or a Wholly-Owned Subsidiary of Borrower; *provided*, that (i) Borrower or such Wholly-Owned Subsidiary shall be the continuing or surviving entity (and

Borrower shall be the continuing or surviving entity if Borrower is a party to such transaction), (ii) the Loan Parties provide Agent with copies of all applicable documentation relating thereto, (iii) all actions required to maintain perfected Liens on the Stock of the surviving entity and other Collateral in favor of Agent shall have been completed, and (iv) after giving effect to such transactions, no Default or Event of Default shall exist and be continuing or be created thereby.

5.9 ERISA. No Loan Party shall, nor shall cause or permit any of its Subsidiaries or ERISA Affiliates to, cause or permit to occur (a) an event that could result in the imposition of a Lien under Section 430 or 6321 of the IRC or Section 303 or 4068 of ERISA or (b) an ERISA Event.

5.10 Hazardous Materials. No Loan Party shall, nor shall it permit any of its Subsidiaries to, cause or permit a Release of any Hazardous Material on, at, in, under, above, to, from or about any of the Real Estate where such Release would (a) violate in any respect, or form the basis for any Environmental Liabilities under, any Environmental Laws or Environmental Permits or (b) otherwise adversely impact the value or marketability of any of the Real Estate or any of the Collateral, other than such violations or Environmental Liabilities that could not reasonably be expected to have a Material Adverse Effect.

5.11 Sale Leasebacks. No Loan Party shall, nor shall it permit any of its Subsidiaries to, engage in any sale leaseback, synthetic lease or similar transaction involving any of its assets.

5.12 Restricted Payments. No Loan Party shall, nor shall it permit any of its Subsidiaries to, declare or make any Restricted Payments except that:

(a) any Wholly-Owned Subsidiary of Borrower may declare and pay dividends and distributions to Borrower, and (ii) any Loan Party or Subsidiary may declare and make dividend payments or other distributions payable solely in its Stock;

(b) the Loan Parties may pay, as and when due and payable, regularly scheduled payments of interest only at the non-default rate and principal in respect of the Subordinated Debt, solely to the extent permitted under the applicable subordination agreement or subordination provisions with respect thereto;

(c) the Loan Parties may pay, as and when due and payable, regularly scheduled payments of interest only at the non-default rate and principal in respect of the Term Loan Debt, solely to the extent permitted under the Intercreditor Agreement;

(d) Borrower may redeem its Stock provided all of the following conditions are satisfied:

(i) no Default or Event of Default has occurred and is continuing or would arise as a result of such Restricted Payment; and

(ii) the aggregate Restricted Payments permitted under this clause (d) in any Fiscal Year of Borrower shall not exceed \$3,000,000; and

(e) Borrower may make other dividends, distributions and redemptions of its Stock provided all of the following conditions are satisfied:

(i) no Default or Event of Default has occurred and is continuing or would arise as a result of such Restricted Payment; and

(ii) Agent shall have received a certificate of a Responsible Officer of Borrower demonstrating that (A) after giving effect to such Restricted Payment, the Fixed Charge Coverage Ratio of the Borrower and its Subsidiaries is not less than 1.00 to 1.00 calculated as of the last day of the most recent month preceding the date on which Restricted Payment is made as if such Restricted Payment was made in such month; and (B) after giving effect to such Restricted Payment, Borrowing Availability is not less than \$15,000,000.

5.13 Change of Corporate Name or Location; Change of Fiscal Year. No Loan Party shall, nor shall it permit any of its Subsidiaries to, (a) change its name as it appears in official filings in the state of its incorporation or other organization, (b) change its chief executive office, principal place of business, business offices or warehouses or locations at which Collateral is held or stored, or the location of its records concerning the Collateral, (c) change the type of entity that it is, (d) change its organization identification number, if any, issued by its state of incorporation or other organization, or (e) change its state of incorporation or organization, unless in each case (i) at least 30 days prior written notice (or such later notice as is acceptable to Agent in its sole discretion) is given by such Loan Party to Agent and Agent has provided written acknowledgment that any reasonable action requested by Agent in connection therewith, including to continue the perfection of any Liens in favor of Agent, for the benefit of the Secured Parties, in any Collateral, has been completed or taken, (ii) the priority of all Liens in favor of Agent is not adversely affected, and (iii) any such new location shall be in the continental United States. No Loan Party shall change its Fiscal Year without Agent's prior written consent.

5.14 No Negative Pledges. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual restriction or encumbrance of any kind on the ability of any Loan Party or any Subsidiary to pay dividends or make any other distribution on any of the Stock of such Loan Party or Subsidiary or to pay fees, including management fees, or make other payments and distributions to Borrower or any other Loan Party. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into, assume or become subject to any contractual obligation prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of Agent, whether now owned or hereafter acquired except in connection with any document or instrument governing Liens permitted pursuant to Section 5.7(c) provided that any such restriction contained therein relates only to the asset or assets subject to such permitted Liens.

5.15 Amendments to Term Loan Debt and Subordinated Debt Documents. No Loan Party shall, nor shall it permit any of its Subsidiaries to, change or amend the terms of the Term Loan Debt or any Subordinated Debt (once such agreements have been initially approved by Agent) except to the extent permitted by the applicable intercreditor and subordination agreements.

5.16 Management Fees and Compensation. No Loan Party shall, nor shall it permit any of its Subsidiaries to, pay any management, consulting or similar fees to any Affiliate of any Loan Party or any Subsidiary or to any officer, director, manager, Stockholder or employee of any Loan Party or any Subsidiary or any Affiliate of any Loan Party or any Subsidiary except:

(a) payment of reasonable compensation to officers and employees for actual services rendered to the Loan Parties and the Subsidiaries in the Ordinary Course of Business; and

(b) payment of outside directors' (or managers') fees and reimbursement of actual out-of-pocket expenses incurred in connection with attending board of director (or manager) meetings not to exceed in the aggregate, with respect to all such items, \$250,000 in any Fiscal Year of Borrower.

5.17 Margin Stock; Use of Proceeds. No Loan Party shall, nor shall it permit any of its Subsidiaries to, use any portion of the Advance proceeds, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of any Loan Party or Subsidiary or others incurred to purchase or carry Margin Stock, or otherwise in any manner which is in contravention of any requirement of applicable Law or in violation of this Agreement.

5.18 Sanctions; Use of Proceeds. No Loan Party shall, nor shall it permit any of its Subsidiaries to, fail to comply with the Laws, regulations and executive orders referred to in Sections 3.12. No Loan Party will, directly or indirectly, use the proceeds of the Loans or Letters of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans or Letters of Credit, whether as Agent, L/C Issuer, Lender, underwriter, advisor, investor, or otherwise).

5.19 Prepayments of Other Indebtedness. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (a) the Obligations, (b) Indebtedness secured by a Permitted Encumbrance if the asset securing such Indebtedness has been sold or otherwise disposed of in a transaction permitted hereunder, (c) a refinancing of Indebtedness permitted under Section 5.3(d), and (d) prepayment of intercompany Indebtedness owing by a Loan Party to another Loan Party.

## **6. FINANCIAL COVENANTS**

6.1 Financial Covenants. The Loan Parties shall not breach or fail to comply with any of the Financial Covenants.

## **7. FINANCIAL STATEMENTS AND INFORMATION**

### **7.1 Reports and Notices**

(a) Each Loan Party executing this Agreement hereby agrees that from and after the Closing Date and until the Termination Date, it shall deliver to Agent or to Agent and Lenders, as



required, the Financial Statements, notices, Projections and other information at the times, to the Persons and in the manner set forth in Annex D.

(b) Each Loan Party executing this Agreement hereby agrees that from and after the Closing Date and until the Termination Date, it shall deliver to Agent or to Agent and Lenders, as required, the various Collateral Reports (including Borrowing Base Certificates in the form of Exhibit 7.1(b)) at the times, to the Persons and in the manner set forth in Annex E.

7.2 Communication with Accountants. Each Loan Party executing this Agreement authorizes (a) Agent and (b) so long as an Event of Default has occurred and is continuing, each Lender, to communicate directly with its independent certified public accountants, including Dixon Hughes Goodman LLC, and authorizes and shall instruct those accountants and advisors to communicate to Agent and each Lender information relating to any Loan Party with respect to the business, results of operations and financial condition of any Loan Party.

## **8. CONDITIONS PRECEDENT.**

8.1 Conditions to the Initial Advances. No Lender shall be obligated to make any Advance or incur any Letter of Credit Obligations on the Closing Date, or to take, fulfill, or perform any other action hereunder, until the following conditions have been satisfied or provided for in a manner reasonably satisfactory to Agent, or waived in writing by Agent:

(a) Credit Agreement; Loan Documents. This Agreement and the other Loan Documents or counterparts hereof and thereof shall have been duly executed by, and delivered to, Borrower, each other Loan Party, Agent and Lenders; and Agent shall have received such documents, instruments, agreements and legal opinions as Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including all those listed in the Closing Checklist attached hereto as Annex C, each in form and substance reasonably satisfactory to Agent.

(b) Approvals. Agent shall have received (i) satisfactory evidence that the Loan Parties have obtained all required consents and approvals of all Persons including all requisite Governmental Authorities, to the execution, delivery and performance of this Agreement and the other Loan Documents or (ii) an officer's certificate in form and substance reasonably satisfactory to Agent affirming that no such consents or approvals are required.

(c) Opening Availability. The Eligible Accounts and Eligible Inventory supporting the initial Revolving Credit Advance and the initial Letter of Credit Obligations incurred and the amount of the Reserves to be established on the Closing Date shall be sufficient in value, as determined by Agent, to provide Borrower with Borrowing Availability and after giving effect to the initial Revolving Credit Advance, the incurrence of any initial Letter of Credit Obligations (on a pro forma basis, with trade payables being paid currently, and expenses and liabilities being paid in the Ordinary Course of Business and without acceleration of sales) of at least 30% of Availability.

(d) Payment of Fees. Borrower shall have paid the Fees required to be paid on the Closing Date in the respective amounts specified in Section 2.4(e) (including the Fees specified in

the Fee Letter), and shall have reimbursed Agent for all Fees, costs and expenses of closing presented as of the Closing Date.

(e) Capital Structure: Other Indebtedness. The capital structure of each Loan Party and Subsidiary, including, without limitation, the receipt by Borrower of the net proceeds of the Term Loan, and the terms and conditions of all other Indebtedness of each Loan Party and Subsidiary shall be acceptable to Agent in its sole discretion.

(f) KYC Information; Beneficial Ownership. Agent and, if requested by a Lender, such Lender, shall have received (i) documentation and other information reasonably requested by Agent or such Lender in order to comply with applicable Law, including the USA PATRIOT Act, and (ii) to the extent Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least 5 days prior to the Closing Date Borrower shall deliver to Agent a Beneficial Ownership Certification.

(g) Due Diligence. Agent shall have completed its business and legal due diligence, including a roll-forward of its previous Collateral audit with results reasonably satisfactory to Agent.

8.2 Further Conditions to Each Advance. Except as otherwise expressly provided herein, no Lender shall be obligated to fund any Advance, convert or continue any Advance as a LIBOR Loan or incur any Letter of Credit Obligation, if, as of the date thereof:

(a) any representation or warranty by any Loan Party contained herein or in any other Loan Document is untrue or incorrect in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that are already qualified or modified by materiality or Material Adverse Effect in the text thereof), except to the extent that such representation or warranty expressly relates to an earlier date in which case such representation or warranty is untrue or incorrect in any material respect as of such earlier date (except that such material qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) and, in each case, except for changes therein expressly permitted or expressly contemplated by this Agreement;

(b) any Default or Event of Default has occurred and is continuing or would result after giving effect to any Advance (or the incurrence of any Letter of Credit Obligation); or

(c) after giving effect to any Advance (or the incurrence of any Letter of Credit Obligations), the outstanding aggregate amount of the Revolving Exposure would exceed the lesser of the Borrowing Base and the Maximum Revolver Amount.

The request and acceptance by Borrower of the proceeds of any Advance (including any Protective Advance, any Overadvance and any Swing Line Advance made pursuant to Section 2.3(b)), the incurrence of any Letter of Credit Obligations or the conversion or continuation of any Advance into, or as, a LIBOR Loan shall be deemed to constitute, as of the date thereof, (i) a representation and warranty by each Loan Party that the conditions in this Section 8.2 have been

satisfied and (ii) a reaffirmation by each Loan Party of the granting and continuance of Agent's Liens on the Collateral, on behalf of itself and Lenders, pursuant to the Collateral Documents.

## **9. EVENTS OF DEFAULT; RIGHTS AND REMEDIES**

9.1 Events of Default. The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

(a) Borrower (i) fails to make any payment of principal of, or interest on, or Fees owing in respect of, the Advances or any of the other Obligations when due and payable, including any failure to cure any Overadvance in accordance with Section 2.2(b)(i) unless such missed payment is caused by Agent or the failure of its automatic sweep program, or (ii) fails to pay or reimburse Agent or Lenders for any expense reimbursable hereunder or under any other Loan Document within 5 days following Agent's demand for such reimbursement or payment of expenses; or

(b) any Loan Party or any Subsidiary fails or neglects to perform, keep or observe any of the provisions of Sections 4.1, 4.4(a), 4.11, 4.13, 5, 6, 7.2 or any of the provisions set forth in Annexes B or E, respectively; or

(c) any Loan Party fails or neglects to perform, keep or observe any of the provisions of Section 4.4(b), 4.4(c), 4.15, 7.1 or any provisions set forth in Annexes D or E, respectively, and the same shall remain unremedied for three (3) Business Days or more; or

(d) any Loan Party or any Subsidiary fails or neglects to perform, keep or observe any other provision of this Agreement or of any of the other Loan Documents (other than any provision embodied in or covered by any other clause of this Section 9.1) and the same shall remain unremedied for thirty (30) days or more after Agent's notice thereof to Borrower; or

(e) a default or breach occurs under any agreement, document or instrument to which any Loan Party or any Subsidiary is a party (determined exclusive of the Loan Documents) that is not cured within any applicable grace period therefor, and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness or Contingent Obligations (determined exclusive of the Obligations) of any Loan Party in excess of \$250,000 (including (x) undrawn committed or available amounts and (y) amounts owing to all creditors under any combined or syndicated credit arrangements), or (ii) causes, or permits any holder of such Indebtedness or Contingent Obligations or a trustee to cause, Indebtedness or Contingent Obligations or a portion thereof in excess of \$1,000,000 in the aggregate to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, or cash collateral to be demanded in respect thereof, in each case, regardless of whether such default is waived, or such right is exercised, by such holder or trustee; or

(f) (i) any information contained in any Borrowing Base Certificate is untrue or incorrect in any material respect or (ii) any representation or warranty herein or in any Loan Document or in any written statement, report, Financial Statement or certificate (other than a Borrowing Base Certificate) made or delivered to Agent or any Lender by any Loan Party is untrue or incorrect in any material respect as of the date when made or deemed made; or

(g) assets of any Loan Party or any Subsidiary with a fair market value of \$250,000 or more are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors of any Loan Party or any Subsidiary and such condition continues for thirty (30) days or more from when Borrower becomes aware of such action; or

(h) a case or proceeding is commenced against any Loan Party or any Subsidiary seeking a decree or order in respect of such Loan Party or such Subsidiary (i) under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or other similar Law, (ii) appointing a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for such Loan Party or such Subsidiary or for any substantial part of any such Loan Party's or such Subsidiary's assets, or (iii) ordering the winding up or liquidation of the affairs of such Loan Party or such Subsidiary, and such case or proceeding shall remain undismissed or unstayed for 60 days or more or a decree or order granting the relief sought in such case or proceeding is granted by a court of competent jurisdiction; or

(i) any Loan Party or any Subsidiary (i) files a petition seeking relief under the Bankruptcy Code or any other applicable federal, state or foreign bankruptcy or other similar Law, (ii) consents to or fails to contest in a timely and appropriate manner to the institution of proceedings thereunder or to the filing of any such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for such Loan Party or such Subsidiary or for any substantial part of any such Loan Party's or such Subsidiary's assets, (iii) makes an assignment for the benefit of creditors, or (iv) takes any action in furtherance of any of the foregoing, or (v) admits in writing its inability to, or is generally unable to, pay its debts as such debts become due; or

(j) either (i) a final judgment or judgments for the payment of money in excess of \$1,000,000 in the aggregate at any time are outstanding against one or more of the Loan Parties and the Subsidiaries (which judgments are not covered by insurance policies as to which liability has been accepted by the insurance carrier), and the same are not, within 30 days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay, (ii) any action shall be taken by a judgment creditor to attach or levy upon any property of any Loan Party to enforce any such judgment under clause (i) above obtained against a Loan Party, or (iii) any Loan Party shall fail within 30 days after the entry thereof to discharge or stay pending appeal one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; or

(k) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms), or any Lien created under any Loan Document ceases to be a valid and perfected first-priority Lien (except as expressly otherwise permitted herein or therein) in any of the Collateral purported to be covered thereby; or

(l) any Change of Control occurs; or

(m) any other event occurs which would have a Material Adverse Effect and such event does not cease or is not curtailed within 30 days after it initiates; or

(n) any provision in the Intercreditor Agreement or any subordination agreement that relates to the Term Loan Debt or any Subordinated Debt, or any subordination provision in any Guaranty by a Loan Party or any Subsidiary of any Subordinated Debt, shall cease to be in full force and effect, or any Person (including the holders of the Term Loan Debt or any applicable Subordinated Debt) shall contest in any manner the validity, binding nature or enforceability of any such provision.

## 9.2 Remedies.

(a) If any Event of Default has occurred and is continuing, Agent may (and at the written request of the Required Lenders shall), without notice, suspend the Revolving Loan Commitment with respect to additional Advances and/or the incurrence of additional Letter of Credit Obligations, whereupon any additional Advances and additional Letter of Credit Obligations shall be made or incurred in Agent's sole discretion (or in the sole discretion of the Required Lenders, if such suspension occurred at their direction) so long as such Event of Default is continuing. If any Event of Default has occurred and is continuing, Agent may (and at the written request of Required Lenders shall), without notice except as otherwise expressly provided herein, increase the rate of interest applicable to the Advances and the Letter of Credit Fees to the Default Rate.

(b) If any Event of Default has occurred and is continuing, Agent may (and at the written request of the Required Lenders shall), without notice: (i) terminate the Revolving Loan Commitments with respect to further Advances or the incurrence of further Letter of Credit Obligations; (ii) reduce the Revolving Loan Commitments from time to time; (iii) declare all or any portion of the Obligations, including all or any portion of any Advance to be forthwith due and payable, and require that the Letter of Credit Obligations be cash collateralized in the manner set forth in Annex A, all without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower and each other Loan Party; (iv) in its Permitted Discretion make Protective Advances, subject to the terms of Section 2.1; or (v) exercise any rights and remedies provided to Agent under the Loan Documents or at Law or equity, including all remedies provided under the Code; *provided*, that upon the occurrence of an Event of Default specified in Sections 9.1(h) or (i), the Revolving Loan Commitments shall be immediately terminated and all of the Obligations, including the Advances and Letter of Credit Obligations, shall become immediately due and payable without declaration, notice or demand by any Person.

(c) At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, as the Interest Periods for LIBOR Loans then in effect expire, such Advances shall be converted into Base Rate Loans and the LIBOR election will not be available to Borrower.

(d) During the continuance of any Event of Default, each Lender is hereby authorized by each Loan Party at any time or from time to time, with reasonably prompt subsequent

notice to Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (i) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of any Loan Party or any of its Subsidiaries (regardless of whether such balances are then due to such Loan Party or Subsidiary), and (ii) other property at any time held or owing by such Lender or any of such Lender's Affiliates to or for the credit or for the account of any Loan Party or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender or any of such Lender's Affiliates shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off (including through an Affiliate) shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Loan Party agrees, to the fullest extent permitted by Law, that any Lender or any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 9.2.

### 9.3 Application of Proceeds.

(a) As to Borrower. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Loan Party irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of Borrower or any Guarantor of all or any part of the Obligations, and, as between the Loan Parties on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) After Application Event. Following the occurrence and during the continuance of an Event of Default, but absent the occurrence and continuance of an Application Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect. Notwithstanding anything to the contrary contained in this Agreement, if an Application Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: first, to all Fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Loan Documents or the Collateral; second, to all Fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Loan Documents or the Collateral; third, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); fourth, to the principal amount of the Obligations outstanding, other than Obligations owing in respect of any Bank Products, and Obligations owing to any Eligible Swap Counterparty in respect of any Rate Contract; fifth, to the Obligations owing in respect of any Bank Products, and to the Obligations owing to any Eligible Swap Counterparty in respect of any Rate Contract; sixth, to provide cash collateral to secure any and all Letter of Credit Obligations and future payment of related Fees, as provided for in Annex A; seventh to any other indebtedness or obligations of any Loan Party owing to Agent or any Lender under the Loan Documents and eighth, to Obligations owing to any Eligible Swap Counterparty in respect of any Swap Contracts other than a Rate Contract.

(c) Residuary. Any balance remaining after giving effect to the applications set forth in this Section 9.3 shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out any of the applications set forth in this Section 9.3, (i) amounts received shall be applied in the numerical order provided until paid in full prior to the application to the next succeeding category and (ii) each of the Persons entitled to receive a payment or cash collateral in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category.

9.4 Actions in Concert. For the sake of clarity, anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or any other Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Agent or Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

9.5 Waivers by Loan Parties. Except as otherwise provided for in this Agreement or by applicable Law, each Loan Party waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Agent on which any Loan Party may in any way be liable, and hereby ratifies and confirms whatever Agent may do in this regard, (b) all rights to notice and a hearing prior to Agent's taking possession or control of, or to Agent's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Agent to exercise any of its remedies, and (c) the benefit of all valuation, appraisal, marshaling and exemption Laws.

## **10. EXPENSES AND INDEMNITY**

10.1 Expenses. Each Loan Party hereby jointly and severally agrees to promptly pay (i) all reasonable actual costs and out of pocket expenses of Agent (including the reasonable fees, costs and expenses of counsel to, and independent appraisers and consultants retained by, Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Loan Documents, in connection with the performance by Agent of its rights and remedies under the Loan Documents and in connection with the continued administration of the Loan Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Loan Documents, (B) any periodic public record searches conducted by or at the request of Agent (including title investigations, Uniform Commercial Code searches, fixture filing searches, judgment, pending Litigation and tax lien searches and searches of applicable corporate, limited liability company, partnership and related records concerning the continued existence, organization and good standing of certain Persons, and (C) any internal audit reviews, field examinations and Collateral examinations (which shall be reimbursed, in addition to the out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by Agent for its examiners or charged to Agent by third-party examiners)), (ii) without limitation of the preceding clause (i), all reasonable actual costs and out of pocket expenses of Agent in connection with

(A) the creation, perfection and maintenance of Liens pursuant to the Loan Documents and (B) protecting, storing, insuring, handling, maintaining or selling any Collateral, (iii) without limitation of the preceding clause (i), all actual costs and out of pocket expenses of Agent in connection with (A) any Litigation, dispute, suit or proceeding relating to any Loan Document and (B) any workout, collection, bankruptcy, insolvency, post-judgment or other enforcement proceedings under any and all of the Loan Documents, and (iv) all actual costs and out of pocket expenses incurred by Lenders in connection with any Litigation, dispute, suit or proceeding relating to any Loan Document and in connection with any workout, collection, bankruptcy, insolvency, post-judgment or other enforcement proceedings under any and all Loan Documents, *provided*, that to the extent that the actual costs and expenses referred to in this clause (iv) consist of fees, costs and expenses of counsel, Borrower shall be obligated to pay such fees, costs and expenses for counsel to Agent, local counsel to Agent in each relevant jurisdiction, and for one counsel acting on behalf of all Lenders (other than Agent).

10.2 Indemnity. Each Loan Party hereby agrees to indemnify, pay and hold harmless Agent, Arranger, Lenders and the Affiliates, officers, directors, employees, trustees, agents, investment advisors, collateral managers, servicers, and counsel of Agent, Arranger, and Lenders (collectively called the “Indemnitees”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for such Indemnatee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnatee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Loan Party or any Affiliate thereof, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent, Arranger, or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnatee as a result of or in connection with the transactions contemplated hereby or by the other Loan Documents (including (i) (A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by a Loan Party or any other Person of any Hazardous Materials or any Hazardous Materials Contamination, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of any Loan Party, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Advances and Letters of Credit, except that the Loan Parties shall not have any obligation under this Section to an Indemnatee with respect to any liability resulting solely from the gross negligence or willful misconduct of such Indemnatee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, the Loan Parties shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.



## 11. AGENT

11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Loan Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 12.5 and to the terms of the other Loan Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Loan Documents on behalf of Lenders. The provisions of this Section 11 are solely for the benefit of the Secured Parties and neither Borrower nor any other Loan Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for Borrower or any other Loan Party. Agent may perform any of its duties hereunder, or under the Loan Documents, by or through its own agents or employees.

11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Loan Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, provide Bank Products to, invest in and generally engage in any kind of business with each Loan Party or Affiliate of any Loan Party as if it were not Agent hereunder.

11.3 Action by Agent; Actions through Sub Agents. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender or other Person. Nothing in this Agreement or any of the Loan Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Loan Documents except as expressly set forth herein or therein. Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by Agent. Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Related Persons. The exculpatory provisions of this Section 11 shall apply to any such sub-agent and to the Related Persons of Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Loan Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder, but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify (i) any statement, warranty or representation made in connection with any Loan

Document or any borrowing hereunder or the contents of any certificate, financial statement or other report or document delivered under or in connection with any Loan Document, (ii) the performance or observance of any of the covenants or agreements specified in any Loan Document, (iii) the satisfaction of any condition specified in any Loan Document, (iv) the validity, effectiveness, sufficiency or genuineness of any Loan Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith, (v) the existence or non-existence of any Default or Event of Default; or (vi) the financial condition of any Loan Party or the value or the sufficiency of any Collateral. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, telex, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

11.6 Indemnification. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required to be paid to Agent under Sections 10.1 or 10.2 (but without affecting the Loan Parties' reimbursement and indemnification obligation hereunder), each Lender shall, in accordance with its Pro Rata Share, pay to Agent such Lender's portion of such unpaid amount (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's Applicable Percentage at such time). If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Loan Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from Required Lenders or all or such other portion of Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of Required Lenders (or all or such other portion of Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent 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 any action under the Loan Documents.

11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (i) release any Lien granted to or held by Agent under any Collateral Document (A) upon termination of the Revolving Loan Commitments and payment in full of all Obligations, the expiration, termination or cash collateralization (to the satisfaction of Agent) of all Letter of Credit Obligations and, to the extent required by Agent in its sole discretion, the expiration, termination or cash collateralization (to the satisfaction of Agent) of all Rate Contract Obligations and all obligations, liabilities and indebtedness in respect of Bank Products in each case secured, in whole or in part, by any Collateral, or (B) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Loan Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Loan Documents), (ii) release any Guarantor from its obligations under the Loan Documents (A) upon termination of the Revolving Loan Commitments and payment in full of all Obligations, the expiration, termination or cash collateralization (to the satisfaction of Agent) of all Letter of Credit Obligations and, to the extent required by Agent in its sole discretion, the expiration, termination or cash collateralization (to the satisfaction of Agent) of all Rate Contract Obligations and all obligations, liabilities and indebtedness in respect of Bank Products in each case secured, in whole or in part, by any Collateral, or (B) upon such Guarantor ceasing to be a Subsidiary pursuant to a transaction permitted by this Agreement (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition being made in full compliance with the provisions of the Loan Documents), and (iii) release or subordinate any Lien granted to or held by Agent under any Collateral Document constituting property described in Section 5.7(c) (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the identification of any property described in Section 5.7(c)). Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Collateral Document or to realize upon any Collateral for the Advances unless instructed to do so by Agent (or consented to by Agent, as provided in Section 9.2(d)), it being understood and agreed that such rights and remedies may be exercised only by Agent.

11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, 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 will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. 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 or in the best interests of Lenders.

11.12 Successor Agent.

(a) Agent may at any time give notice of its resignation to Lenders, L/C Issuer, Swing Line Lender, and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right, in consultation with Borrower, to appoint a successor Agent. Upon the acceptance of a successor’s appointment as Agent hereunder and notice of such acceptance to the retiring Agent, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, the retiring Agent’s resignation shall become immediately effective and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents (if such resignation was not already effective and such duties and obligations not already discharged, as provided below in this paragraph). The Fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of Lenders, L/C Issuer and Swing Line Lender (but without any obligation) appoint a successor Agent, which appointment shall not be subject to consent by Required Lenders or any Loan Party. From and following the expiration of such 30 day period, Agent shall have the exclusive right, upon 1 Business Day’s notice to Borrower and Lenders, to make its resignation effective immediately. From and following the effectiveness of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender, the L/C Issuer and the Swing Line Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph. The provisions of this Agreement shall continue in effect for the benefit of any retiring Agent and its sub-agents after the effectiveness of its resignation hereunder and under the other Loan Documents in respect of any actions taken or omitted to be taken by any of them (x) while the retiring Agent was acting or was continuing to act as Agent and (y) after such resignation for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including acting as collateral agent or otherwise holding any collateral security on behalf of any of the holders of the Obligations and in respect of any actions taken in connection with transferring the agency to any successor Agent.

(b) Notwithstanding anything to the contrary herein, if at any time Agent assigns all of its Revolving Loan Commitments and Revolving Loans pursuant to (and in accordance with) the terms and conditions hereof, Agent may terminate Borrower’s ability to request Swing Line Advances. In the event of such termination: (i) Borrower shall be entitled to appoint another Lender to act as the

successor Swing Line Lender hereunder (with such Lender's consent); *provided, however*, that the failure of Borrower to appoint a successor shall not affect the resignation of Agent as the Swing Line Lender; and (ii) Agent shall retain all of the rights of the maker of Swing Line Advances provided hereunder with respect to Swing Line Advances made by it and outstanding as of the effective date of such termination, including the right to require Lenders to make Revolving Loans or fund participations in outstanding Swing Line Advances pursuant to Section 2.3.

(c) Notwithstanding anything to the contrary herein, if at any time Agent assigns all of its Revolving Loan Commitments and Revolving Loans pursuant to (and in accordance with) the terms and conditions hereof, Agent may terminate its commitment pursuant to Section 2.6 to issue Letters of Credit. In the event of such termination: (i) Borrower shall be entitled to appoint another Lender to act as the successor L/C Issuer hereunder (with such Lender's consent); *provided, however*, that the failure of Borrower to appoint a successor shall not affect the resignation of Agent as the L/C Issuer; and (ii) Agent shall retain all of the rights of the L/C Issuer hereunder with respect to Letters of Credit made by it and outstanding as of the effective date of such termination, including the right to require Lenders to fund their Pro Rata Share of such Letters of Credit pursuant to Section 2.6.

#### 11.13 Disbursements of Revolving Credit Advances; Payment and Sharing of Payment.

##### (a) Revolving Credit Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Lender will fund its Pro Rata Share of all Revolving Credit Advances requested by Borrower. Each Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Lender will remit to Agent its Pro Rata Share of any Revolving Credit Advance before Agent disburses the same to Borrower. If Agent elects to require that each Lender make funds available to Agent, prior to a disbursement by Agent to Borrower, Agent shall advise each Lender by telephone, facsimile or email of the amount of such Lender's Pro Rata Share of the Revolving Credit Advance requested by Borrower no later than 12:00 noon on the date of funding of such Revolving Credit Advance, and each such Lender shall pay Agent on such date such Lender's Pro Rata Share of such requested Revolving Credit Advance, in same day funds, by wire transfer to Agent's account specified by Agent to Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share within 1 Business Day after Agent's demand, Agent shall promptly notify Borrower, and Borrower shall immediately repay such amount to Agent. Any repayment required by Borrower pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Credit Advances which are Base Rate Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Loan Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments

hereunder or to prejudice any rights that Agent or Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "Settlement Date"), Agent will advise each Lender by telephone, facsimile or email of the amount of each such Lender's percentage interest of the Revolving Credit Advance balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Lender's actual percentage interest of the Revolving Credit Advances balance to such Lender's required percentage interest of the Revolving Credit Advances balance as of any Settlement Date, the party from which such payment is due shall pay Agent, without setoff or discount, to Agent's account specified by Agent to Lenders from time to time not later than 3:00 p.m. on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the Federal Funds Rate, for the first 3 days following the scheduled date of settlement, and thereafter at the Base Rate plus the Applicable Margin for Base Rate Loans applicable to Revolving Credit Advances.

(iii) On each Settlement Date, Agent shall advise each Lender by telephone, facsimile or email of the amount of such Lender's percentage interest of principal, interest and Fees paid for the benefit of Lenders with respect to each applicable Revolving Credit Advances, to the extent of such Lender's Revolving Exposure with respect thereto, and shall make payment to such Lender not later than 3:00 p.m. on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided*, that, in the case such Lender is a Defaulting Lender, Agent shall be entitled to set off the funding short fall of such Defaulting Lender against that Defaulting Lender's respective share of all payments received from Borrower.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrower the full amount of the Advances to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender's commitment to make its Pro Rata Share of such Advances to Borrower in a timely manner on such date. If Agent elects to advance such Advances to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender's Pro Rata Share of such Advances unless Agent receives such Lender's Pro Rata Share of such Advances by 3:00 p.m. on the Closing Date.

(v) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to Borrower or any other Loan Party.

(b) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to Borrower or paid to any other Person pursuant to any insolvency Law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(c) Defaulting Lenders. The failure of any Defaulting Lender to make any Advances or any payment required by it hereunder shall not relieve any other Lender of its obligations to make such Advances or payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulting Lender to make Advances or make any other payment required hereunder.

(d) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Advance (other than pursuant to the terms of Section 2.10) in excess of its pro rata share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however*, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (d) may, to the fullest extent permitted by Law, exercise all its rights of payment (including pursuant to Section 9) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. If under any applicable bankruptcy, insolvency or other similar Law, any Lender receives a secured claim in lieu of a setoff to which this clause (d) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of Lenders entitled under this clause (d) to share in the benefits of any recovery on such secured claim.

11.14 Reserved

11.15 Reserved

11.16 Withholding Tax. To the extent required by any applicable Law, Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any 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 (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective, or for any other reason), such Lender shall indemnify Agent (to the extent that Agent has not already been reimbursed by a Loan Party and without limiting the obligation of any Loan Party to do so) fully for all amounts paid, directly or indirectly, by Agent as Tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

11.17 Agent May File Proof of Claim.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, Agent (irrespective of whether the principal of any Advance or any Revolving Exposure shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Advances or the Revolving Exposure and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, the Swing Line Lender and Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, Swing Line Lender and Agent and its agents and counsel and all other amounts due Lenders, Swing Line Lender and Agent under Section 10.1) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(b) Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Swing Line Lender to make such payments to Agent and, if Agent shall consent to the making of such payments directly to Lenders and Swing Line Lender, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, and any other amounts due Agent under Section 10.1.

Nothing contained herein shall be deemed to authorize Agent to authorize or consent to or accept or adopt on behalf of any Lender or Swing Line Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Agent to vote in respect of the claim of any Lender in any such proceeding.



11.18 Agent in Individual Capacity. Fifth Third and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Stock in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with each Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though Fifth Third were not Agent hereunder, and, in each case, without notice to or consent of the other Lenders. The other Lenders acknowledge (and by entering into an agreement regarding Bank Products, each provider of Bank Products shall be deemed to acknowledge) that, pursuant to such activities, Fifth Third or its Affiliates may receive information regarding the Loan Parties, the Subsidiaries or their respective Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders (or providers of Bank Products), and the Lenders acknowledge (and by entering into an agreement regarding Bank Products, each provider of Bank Products shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms “Lender” and “Lenders” include Fifth Third in its individual capacity.

11.19 ERISA Fiduciary Representations and Warranties.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Agent and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Revolving Loan Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Revolving Loan Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Advances, the Letters of Credit, the Revolving Loan Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Revolving Loan Commitments and this

Agreement satisfies the requirements of subsections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Revolving Loan Commitments and this Agreement, or

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

(b) In addition, unless either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Agent and the Arranger and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that none of Agent, the Arranger, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Revolving Loan Commitments and this Agreement (including in connection with the reservation or exercise of any rights by Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

## **12. MISCELLANEOUS**

12.1 Survival. All agreements, representations and warranties made herein and in every other Loan Document shall survive the execution and delivery of this Agreement and the other Loan Documents. The provisions of Sections 2.5(e), 2.9, 2.10 and 2.11 and Sections 10, 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement.

12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Loan Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by Law. Any reference in any Loan Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that Borrower or any other Loan Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Loan Documents.

### **12.3 Notices.**

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, email, electronic submissions or similar writing, but not facsimile transmission) and shall be given to such party at its address or email address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the

date hereof, in an Assignment Agreement or in a notice delivered to Borrower and Agent by the assignee Lender forthwith upon such assignment) or at such other address or email address as such party may hereafter specify for the purpose by notice to Agent and Borrower; *provided*, that notices, requests or other communications shall be permitted by email or other electronic submissions only in accordance with the provisions of Section 12.3(b). Each such notice, request or other communication shall be effective (i) if given by email or other electronic submissions, as set forth in Section 12.3(c) or (ii) if given by mail, prepaid overnight courier or any other means, when received at the applicable address specified by this Section. Notwithstanding anything to the contrary herein, and for the avoidance of any doubt, notices, requests and other communications delivered by facsimile transmission do not satisfy the requirements of this Section 12.3.

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including email and Internet or intranet websites); *provided*, that (i) the foregoing shall not apply to notices sent directly to any party hereto if such party has notified Agent that it has elected not to receive notices by electronic communication (which election may be limited to particular notices) and (ii) any Notice of Borrowing, Notice of Conversion/Continuation or any notices regarding request for advances hereunder shall be delivered or furnished by Borrower by electronic communication in accordance with all procedures established by or otherwise acceptable to Agent from time to time in its sole discretion.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an email address 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), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; *provided*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

12.4 Severability. In case any provision of or obligation under this Agreement or any other Loan Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

#### 12.5 Amendments and Waivers.

(a) General Provisions. No provision of this Agreement or any other Loan Document (other than the Fee Letter) may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrower, Agent and Required Lenders (and, if any amendment, waiver or other modification would increase a Lender's Revolving Loan Commitment, by such Lender); *provided*, that no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by Agent, Borrower and all Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any Fees with respect to any Advance or Reimbursement Obligation or forgive any principal, interest or Fees with respect to any Advance or Reimbursement Obligation, (B) postpone the date fixed for, or waive, any payment

(other than a payment pursuant to Section 2.2(b)) of principal of any Advance, or of any Reimbursement Obligation or of interest on any Advance or any Reimbursement Obligation or any Fees hereunder or postpone the date of termination of the Revolving Loan Commitment of any Lender hereunder, (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder, (D) release all or substantially all of the Collateral, authorize Borrower or any other Loan Party to sell or otherwise dispose of all or substantially all of the Collateral or release all or substantially all of the value of the Guarantors, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder and including as provided in Section 11.9), (E) modify Section 9.3, (F) amend, waive or otherwise modify this Section 12.5(a) or the definitions of the terms used in this Section 12.5(a) insofar as the definitions affect the substance of this Section 12.5(a); or (G) consent to the assignment, delegation or other transfer by any Loan Party of any of its rights and obligations under any Loan Document or release Borrower or any other Loan Party of its payment obligations under any Loan Document, except, in each case with respect to this clause (G), pursuant to a merger, consolidation or other transaction permitted pursuant to this Agreement. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence. Notwithstanding anything to the contrary set forth in this Agreement, this Agreement may be amended and restated without the consent of any Lender (but with the consent of Borrower and Agent) if upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Revolving Loan Commitments of such Lender shall have terminated (but such Lender shall continue to be entitled to the benefits of Section 2.9, Section 2.5(e), Section 10.1, Section 10.2 and Section 11.13(d)), such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement. Notwithstanding anything herein or otherwise to the contrary, any Event of Default occurring hereunder shall continue to exist (and shall be deemed to be continuing) until such time as such Event of Default is waived in writing in accordance with the terms of this Section 12.5 notwithstanding (i) any attempted cure or other action taken by Borrower or any other Person subsequent to the occurrence of such Event of Default or (ii) any action taken or omitted to be taken by Agent or any Lender prior to or subsequent to the occurrence of such Event of Default (other than the granting of a waiver in writing in accordance with the terms of this Section).

(b) Agent, Swing Line Lender, L/C Issuer Consent Rights. No amendment, waiver or consent shall, unless in writing and signed by Agent, the Swing Line Lender or the L/C Issuer, as the case may be, in addition to the Required Lenders or all Lenders directly affected thereby, as the case may be (or by Agent with the consent of the Required Lenders or all the Lenders directly affected thereby, as the case may be), affect the rights or duties of Agent, the Swing Line Lender or the L/C Issuer, as applicable, under this Agreement or any other Loan Document.

(c) Defaulting Lenders. Notwithstanding anything set forth herein to the contrary, a Defaulting Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a “Lender” (or be, or have its Advances and Revolving Loan Commitments, included in the determination of “Required Lenders,” or “Lenders directly affected” pursuant to this Section 12.5) for any voting or consent rights under or with respect to any Loan

Document, except that a Defaulting Lender shall be treated as an “affected Lender” solely with respect to an increase in or extension of such Defaulting Lender’s Revolving Loan Commitments, a reduction of the principal amount owed to such Defaulting Lender or, unless such Defaulting Lender is treated the same as the other Lenders holding Advances of the same type, a reduction in the interest rates applicable to the Advances held by such Defaulting Lender, and any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender. Moreover, for the purposes of determining Required Lenders, the Advances and Revolving Loan Commitments held by Defaulting Lenders shall be excluded from the total Advances and Revolving Loan Commitments outstanding.

(d) Certain Amendments. Notwithstanding anything to the contrary contained in this Section 12.5, (i) Agent may amend Annex G to reflect any assignments entered into pursuant to Section 12.6, (ii) Agent and Borrower may amend or modify this Agreement and any other Loan Document to (1) cure any ambiguity, omission, defect or inconsistency therein, and (2) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional property for the benefit of the Secured Parties or join additional Persons as Loan Parties; *provided*, that no Accounts or Inventory of such Person shall be included as Eligible Accounts or Eligible Inventory until a field examination (and, if required by Agent, an Inventory appraisal) with respect thereto has been completed to the satisfaction of Agent, including the establishment of Reserves required in Agent’s Permitted Discretion, and (iii) amendments in connection with any Increase shall be permitted as provided in Section 2.15.

(e) Eligible Swap Counterparty and Bank Product Consent Rights. Without limitation of the foregoing provisions of this Section 12.5, no waiver, amendment or other modification to this Agreement shall, unless signed by each Eligible Swap Counterparty and each provider of Bank Products then in existence, modify the provisions of Section 9.3 in any manner adverse to the interests of each such Eligible Swap Counterparty and/or such provider of Bank Products.

#### 12.6 Assignments; Participations; Replacement of Lenders.

##### (a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender’s Advances and interest in the Revolving Loan Commitments, together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a “Trade Date” is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to \$2,000,000 or, if less, the assignor’s entire interests in the Revolving Loan Commitments and outstanding Advances; *provided*, that, in connection with simultaneous assignments to two or more related Affiliates, such Affiliates shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrower and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto, such other information regarding such Eligible Assignee as Agent reasonably shall require and a processing

fee of \$3,500; *provided*, only one processing fee shall be payable in connection with simultaneous assignments to two or more related Affiliates.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's percentage interest in the Revolving Loan Commitment (and, as applicable, Notes in the principal amount of that portion of the Revolving Loan Commitment retained by the assigning Lender). Upon receipt by the assigning Lender of such promissory note, the assigning Lender shall return to Borrower any prior promissory note, if any, held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at its offices located in Cincinnati, Ohio a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the Revolving Loan Commitment of, and principal amount and stated interest of the Advances owing to, such Lender pursuant to the terms hereof (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. It is intended that the Register be maintained such that the Advances are in "registered form" for the purposes of the IRC.

(iv) Notwithstanding the foregoing provisions of this Section 12.6(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, Borrower or Agent, sell to one or more Persons participating interests in its Advances, commitments or other interests hereunder (any such Person, a "Participant"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly

to such Lender, *provided, however*, notwithstanding the foregoing, Borrower hereby agrees that each Participant shall be entitled to the benefits of Section 2.10 (subject to the requirements and limitations set forth in Section 2.11) and the requirements under Section 2.9 (it being understood that the documentation required under Section 2.9 shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (a) of this Section 12.6; *provided, further*, a Participant shall not be entitled to receive any greater payment under Section 2.10, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Law, regulation ruling, treaty or other action or doctrine of a Governmental Authority that occurs after the date the Participant acquired the applicable participation. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 12.5 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement and with respect to any Letter of Credit to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 9.2(d). Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Advances or other obligations under the Loan Documents (the "Participant Register"); *provided*, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive and binding absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(c) Replacement of Lenders. Within 30 days after (i) receipt by Agent of notice and demand from any Lender for payment of additional costs or as provided in Sections 2.5(e) and 2.10, which demand shall not have been revoked, (ii) Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.9, (iii) any Lender is a Defaulting Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Loan Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "Affected Lender"), Borrower and/or Agent may, at its option, notify such Affected Lender and, in the case of Borrower's election, Agent, of such Person's intention to obtain, at Borrower's expense, a replacement Lender ("Replacement Lender") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described

in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrower or Agent, as applicable, obtains a Replacement Lender within 90 days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Advances and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 12.6(a); *provided*, that (A) Borrower shall have, as applicable, reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under any of Sections 2.5(e), 2.9 or 2.10, as applicable, of this Agreement through the date of such sale and assignment and (B) Borrower shall pay to Agent the \$3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 12.6(a) within 5 Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 12.6(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 12.6(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 12.6(a), Borrower, shall be effective for purposes of this Section 12.6(c) and Section 12.6(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a “Lender” for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Loan Party Assignments. No Loan Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Loan Document without the prior written consent of Agent and each Lender.

12.7 Headings. Headings and captions used in the Loan Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

12.8 Confidentiality. Agent and each Lender shall hold all non-public information regarding the Loan Parties and their respective businesses identified as such by Borrower and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person’s customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, auditors, professional consultants, advisors and representatives of such Person and of such Person’s Affiliates (collectively, the “Related Parties” of such Person) (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (ii) to rating agencies, insurance industry associations and portfolio management services, (iii) to prospective transferees or purchasers of or participants in any interest in the Advances and, as applicable, the Loan Documents, to prospective contractual counterparties (or the professional advisors thereto) in Rate Contracts permitted hereby and to prospective providers of Bank Products, *provided*, that any such Persons shall have agreed to be bound by the provisions of this Section 12.8, (iv) to the extent requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties, including any self-regulatory authority, (v) to any other Party hereto, (vi) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vii) as required by Law,



subpoena, judicial order or similar order and in connection with any Litigation, (viii) as may be required in connection with the examination, audit or similar investigation of such Person, (ix) with the consent of Borrower, (x) to the extent such information (A) becomes publicly available other than as a result of a breach of this Section, or (B) becomes available to Agent or any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Loan Parties, and (xi) to a Person that is a trustee, investment advisor, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "Securitization" shall mean a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of Stock or debt securities which represent an interest in, or which are collateralized, in whole or in part, by the Advances. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either (A) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (B) is disclosed to such Person by a Person other than a Loan Party, *provided*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.8 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

12.9 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Advance or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

12.10 Marshaling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that any Loan Party makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefore, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

12.11 GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS AGREEMENT, EACH NOTE AND EACH OTHER LOAN DOCUMENT, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OHIO, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. EACH LOAN PARTY

HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF HAMILTON, STATE OF OHIO AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH LOAN PARTY EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH LOAN PARTY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON EACH SUCH LOAN PARTY BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH LOAN PARTY AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE 10 DAYS AFTER THE SAME HAS BEEN POSTED.

12.12 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH LOAN PARTY, AGENT AND LENDERS HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH LOAN PARTY, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

12.13 Publication; Advertisement.

(a) Publication. No Loan Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of Fifth Third or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Loan Party shall give Agent prior written notice of such publication or other disclosure or (ii) with Fifth Third's prior written consent.

(b) Advertisement. Each Lender and each Loan Party hereby authorizes Fifth Third to publish the name of such Lender and Loan Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which Fifth Third elects to submit for publication. In addition, each Lender and each Loan Party agrees that Fifth Third may provide lending industry trade organizations with information necessary and

customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, Fifth Third shall provide Borrower with an opportunity to review and confer with Fifth Third regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, Fifth Third may, from time to time, publish such information in any media form desired by Fifth Third, until such time that Borrower shall have requested Fifth Third cease any such further publication.

12.14 Counterparts; Integration. This Agreement and the other Loan Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or other electronic transmission (including “pdf” or “tif” format) shall bind the parties hereto. This Agreement and the other Loan Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

12.15 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

12.16 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies such Loan Party, which information includes the name and address of each Loan Party and such other information that will allow Agent or such Lender, as applicable, to identify such Loan Party in accordance with the USA PATRIOT Act. The Loan Parties agree to, promptly following a request by Agent or any Lender, provide all such other documentation and information that Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, and the Beneficial Ownership Regulation.

12.17 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

12.18 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Rate Contracts or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the Laws of the State of New York and/or of the United States or any other state of the United States), and in the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the Laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the Laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

**THE DIXIE GROUP, INC.**

**By:**  
**Name:**  
**Title:**  
**TDG OPERATIONS, LLC**

**By:**  
**Name:**  
**Title:**  
**Borrower's Account:**

**Bank Name: Fifth Third Bank**

**ABA No.:** \_\_\_\_\_  
**Account No.:** XXXXXX[*last four digits*]  
**Account Name:** \_\_\_\_\_  
**Reference:** \_\_\_\_\_  
**Borrower's Address for Notices:**

**475 Reed Road**  
**Dalton, GA 30720**  
**Attn: Jon A. Faulkner**  
[\*\*Jon.faulkner@dixiegroup.com\*\*](mailto:Jon.faulkner@dixiegroup.com)

**With a copy to:**

**Miller & Martin, PLLC**  
**Attn: John Henry**  
**832 Georgia Avenue, Suite 1200**  
**Chattanooga, TN 37402**  
[\*\*John.henry@millermartin.com\*\*](mailto:John.henry@millermartin.com)

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**FIFTH THIRD BANK**, as Agent and a Lender

By:

Duly Authorized Signatory

**Agent's Address for Notices:**

Fifth Third Bank  
222 South Riverside Plaza  
Chicago, Illinois 60606  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

and

Fifth Third Bank  
38 Fountain Square Plaza  
MD #10908F  
Cincinnati, Ohio 45263  
Attention: Asset Based Lending Group  
Facsimile: (513) 534-8400

with a copy to:

McDonald Hopkins LLC  
600 Superior Ave., East  
Suite 2100  
Cleveland, Ohio 44114  
Attention: James E. Stief, Esq.  
Email: [jstief@mcdonaldhopkins.com](mailto:jstief@mcdonaldhopkins.com)  
Facsimile: (216) 348-5474

## GUARANTY AND SECURITY AGREEMENT

THIS GUARANTY AND SECURITY AGREEMENT (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Security Agreement”), dated as of October 28, 2020, is made by THE DIXIE GROUP, INC., a Tennessee corporation (“Dixie”), and TDG OPERATIONS, LLC, a Georgia limited liability company (“TDG” and, together with Dixie, collectively, “Borrower”) (Borrower is sometimes collectively referred to herein as “Grantors” and each individually as a “Grantor”), in favor of FIFTH THIRD BANK, NATIONAL ASSOCIATION, as agent (in such capacity, “Agent”) for the lenders (“Lenders”) from time to time party to the Credit Agreement (as defined below).

### RECITALS

A. Pursuant to that certain Credit Agreement of even date herewith by and among Grantors, the other Loan Parties from time to time party thereto, Agent and Lenders (including all annexes, exhibits and schedules thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), Lenders have agreed to extend certain financial accommodations to or for the direct or indirect benefit of Grantors.

B. In order to induce Agent and Lenders to enter into the Credit Agreement and the other Loan Documents and to induce Lenders to make the Revolving Loans and to incur Letter of Credit Obligations as provided for in the Credit Agreement, (i) each Grantor has agreed to grant a continuing Lien on the Collateral (as defined below) to secure the Obligations and (ii) each Grantor (other than Borrower) (each, a “Guarantor” and collectively, the “Guarantors”) has agreed to guaranty the Guaranteed Obligations.

C. Each Guarantor is an Affiliate or a Subsidiary of Borrower and, as such, will benefit by virtue of the financial accommodations extended to Borrower by Lenders. These recitals shall be construed as part of this Security Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantors and Agent agree as follows:

1. **DEFINED TERMS.** Unless otherwise defined herein, capitalized terms or matters of construction defined or established in Appendix A to the Credit Agreement shall be applied herein as defined or established therein. All other undefined terms contained in this Security Agreement, unless the context indicates otherwise, shall have the meanings provided for by the Code to the extent the same are used or defined therein.

In addition to those terms defined elsewhere in this Security Agreement, as used in this Security Agreement, the following terms shall have the following meanings:

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“Acquisition Document Undertakings” means any and all representations, warranties, covenants and indemnification agreements and other agreements made to or for the benefit of any Grantor pursuant to any and all Acquisition Documents, including without limitation any escrow agreement entered into by any Grantor in connection therewith.

“Acquisition Documents” means the agreements, instruments and documents evidencing, or entered into in connection with, an Acquisition (including a Permitted Acquisition) by a Grantor.

“Excluded Property” has the meaning ascribed to it in the Credit Agreement.

“Intercompany Note” means any promissory note evidencing loans made by any Grantor to any other Grantor.

“Issuers” means the collective reference to each issuer of any Investment Property.

“Guarantied Obligations” means all of the Obligations (including any Obligations due and owing with respect to Bank Products) now or hereafter existing, whether for principal, interest (including any interest that accrues after the commencement of an Insolvency Event, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Event), fees (including the fees provided for in the Fee Letter), expenses (including any fees or expenses that accrue after the commencement of an Insolvency Event, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Event), or otherwise, and any and all expenses (including reasonable counsel fees and expenses) incurred by Agent, any Lender, or any provider of Bank Products (or any of them) in enforcing any rights under the any of the Loan Documents. Without limiting the generality of the foregoing, Guarantied Obligations shall include all amounts that constitute part of the Guarantied Obligations and would be owed by Borrower to Agent, or any Lender Party but for the fact that such amounts are unenforceable or not allowable, including due to the existence of a bankruptcy, reorganization, other Insolvency Event or similar proceeding involving Borrower or any Guarantor; *provided* that, anything to the contrary contained in the foregoing notwithstanding, the Guarantied Obligations shall exclude any Excluded Swap Obligation.

“Lender Parties” means, collectively, each Lender, each provider of Bank Products and each provider of Rate Contracts.

“Pledged Notes” means all promissory notes listed on Schedule IV, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor (other than promissory notes issued in connection with extensions of trade credit by any Grantor in the ordinary course of business).

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Guarantor that has total assets exceeding \$10,000,000 at the time the relevant guaranty, keepwell, or grant of the relevant security interest becomes effective with respect to such Swap 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

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“eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

## 2. GUARANTY.

(a) Guaranty. In recognition of the direct and indirect benefits to be received by each Guarantor from the proceeds of the Revolving Loans, the issuance of the Letters of Credit, and the entering into of the Bank Products and by virtue of the financial accommodations to be made to Borrower, each Guarantor, jointly and severally, hereby unconditionally and irrevocably guarantees as a primary obligor and not merely as a surety the full and prompt payment when due, whether upon maturity, acceleration, or otherwise, of all of the Guaranteed Obligations. If any or all of the Obligations constituting Guaranteed Obligations becomes due and payable, each Guarantor, unconditionally and irrevocably, and without the need for demand, protest, or any other notice or formality, promises to pay such indebtedness to Agent, for the benefit of Lender Parties, together with any and all expenses that may be incurred by Agent or any Lender Party in demanding, enforcing, or collecting any of the Guaranteed Obligations (including the enforcement of any Collateral for such Guaranteed Obligations or any Collateral for the obligations of the Guarantors under this Guaranty). If claim is ever made upon Agent, any Lender Party for repayment or recovery of any amount or amounts received in payment of or on account of any or all of the Guaranteed Obligations and any of Agent or any Lender Party repays all or part of said amount by reason of (i) any judgment, decree, or order of any court or administrative body having jurisdiction over such payee or any of its property, or (ii) any settlement or compromise of any such claim effected by such payee with any such claimant (including Borrower or any Guarantor), then and in each such event, each Guarantor agrees that any such judgment, decree, order, settlement, or compromise shall be binding upon such Guarantor, notwithstanding any revocation (or purported revocation) of this Guaranty or other instrument evidencing any liability of any Grantor, and each Guarantor shall be and remain liable to the aforesaid payees hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.

(b) Bankruptcy. Additionally, each Guarantor unconditionally and irrevocably guarantees the payment of any and all of the Guaranteed Obligations to Agent, for the benefit of Lender Parties, whether or not due or payable by any Loan Party upon the occurrence of any of the events specified in Sections 9.1(h) or 9.1(i) of the Credit Agreement, and irrevocably and unconditionally promises to pay such indebtedness to Agent, for the benefit of Lender Parties, without the requirement of demand, protest, or any other notice or other formality, in lawful money of the United States.

(c) Liability Absolute. The liability of each Guarantor hereunder is primary, absolute, and unconditional, and is independent of any security for or other guaranty of the Guaranteed Obligations, whether executed by any other Guarantor or by any other Person, and the liability of each Guarantor hereunder shall not be affected or impaired by (i) any payment on, or in reduction of, any such other guaranty or undertaking, (ii) any dissolution, termination, or increase, decrease, or change in personnel by any Grantor, (iii) any payment made to Agent or

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any Lender Party on account of the Obligations which Agent or such Lender Party repays to any Grantor pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding (or any settlement or compromise of any claim made in such a proceeding relating to such payment), and each Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding, or (iv) any action or inaction by Agent or any Lender Party, or (v) any invalidity, irregularity, avoidability, or unenforceability of all or any part of the Obligations or of any security therefor.

(d) Continued Effect. This Guaranty includes all present and future Guaranteed Obligations including any under transactions continuing, compromising, extending, increasing, modifying, releasing, or renewing the Guaranteed Obligations, changing the interest rate, payment terms, or other terms and conditions thereof, or creating new or additional Guaranteed Obligations after prior Guaranteed Obligations have been satisfied in whole or in part. To the maximum extent permitted by law, each Guarantor hereby waives any right to revoke this Guaranty as to future Guaranteed Obligations. If such a revocation is effective notwithstanding the foregoing waiver, each Guarantor acknowledges and agrees that (i) no such revocation shall be effective until written notice thereof has been received by Agent, (ii) no such revocation shall apply to any Guaranteed Obligations in existence on the date of receipt by Agent of such written notice (including any subsequent continuation, extension, or renewal thereof, or change in the interest rate, payment terms, or other terms and conditions thereof), (iii) no such revocation shall apply to any Guaranteed Obligations made or created after such date to the extent made or created pursuant to a legally binding commitment of Agent or any Lender Party in existence on the date of such revocation, (iv) no payment by any Guarantor, Borrower, or from any other source, prior to the date of Agent's receipt of written notice of such revocation shall reduce the maximum obligation of such Guarantor hereunder, and (v) any payment by Borrower or from any source other than such Guarantor subsequent to the date of such revocation shall first be applied to that portion of the Guaranteed Obligations as to which the revocation is effective and which are not, therefore, guaranteed hereunder, and to the extent so applied shall not reduce the maximum obligation of such Guarantor hereunder. This Guaranty shall be binding upon each Guarantor, its successors and assigns, and shall inure to the benefit of and be enforceable by Agent (for the benefit of Lender Parties) and its successors, transferees, or assigns.

(e) Guaranty of Payment. The guaranty by each Guarantor hereunder is a guaranty of payment and not of collection. The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor or Grantor or any other Person and a separate action or actions may be brought and prosecuted against one or more Guarantors whether or not action is brought against any other Guarantor or Grantor or any other Person and whether or not any other Guarantor or Grantor or any other Person be joined in any such action or actions. Each Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Grantor or other circumstance which operates to toll any statute of limitations as to any Grantor shall operate to toll the statute of limitations as to each Guarantor.

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(f) Actions by Agent, etc. Each Guarantor authorizes Agent and Lender Parties, without notice or demand, and without affecting or impairing its liability hereunder, from time to time to:

(i) change the manner, place, or terms of payment of, or change or extend the time of payment of, renew, increase, accelerate, or alter: (A) any of the Obligations (including any increase or decrease in the principal amount thereof or the rate of interest or fees thereon); or (B) any security therefor or any liability incurred directly or indirectly in respect thereof, and this Guaranty shall apply to the Obligations as so changed, extended, renewed, or altered;

(ii) take and hold security for the payment of the Obligations and sell, exchange, release, impair, surrender, realize upon, collect, settle, or otherwise deal with in any manner and in any order any property at any time pledged or mortgaged to secure the Obligations or any of the Guaranteed Obligations (including any of the obligations of all or any Guarantor under this Guaranty) incurred directly or indirectly in respect thereof or hereof, or any offset on account thereof;

(iii) exercise or refrain from exercising any rights against any Grantor;

(iv) release or substitute any one or more endorsers, guarantors, any Grantor, or other obligors;

(v) settle or compromise any of the Obligations, any security therefor, or any liability (including any of those of any of the Guarantors under this Guaranty) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of any Grantor to its creditors;

(vi) apply any sums by whomever paid or however realized to any liability or liabilities of any Grantor to Agent or any Lender Party regardless of what liability or liabilities of such Grantor remain unpaid;

(vii) consent to or waive any breach of, or any act, omission, or default under, this Security Agreement, any other Loan Document, any agreement in respect of Bank Products, any Rate Contract or any of the instruments or agreements referred to herein or therein, or otherwise amend, modify, or supplement this Security Agreement, any other Loan Document, any agreement in respect of Bank Products, any Rate Contract or any of such other instruments or agreements; or

(viii) take any other action that could, under otherwise applicable principles of law, give rise to a legal or equitable discharge of one Guarantor from all or part of its liabilities under this Guaranty.

(g) Capacity. It is not necessary for Agent or any Lender Party to inquire into the capacity or powers of any Guarantor or the officers, directors, partners or agents acting or purporting to act on their behalf, and any Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

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(h) Waiver of Certain Defenses. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of Agent or any Lender Party with respect thereto. The obligations of each Guarantor under this Guaranty are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any other Guarantor or whether any other Guarantor is joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defense it may now or hereafter have in any way relating to, any or all of the following:

(i) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(ii) any change in the time, manner, or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document, including any increase in the Guaranteed Obligations resulting from the extension of additional credit;

(iii) any taking, exchange, release, or non-perfection of any Lien in and to any Collateral, or any taking, release, amendment, waiver of, or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(iv) the existence of any claim, set-off, defense, or other right that any Guarantor may have at any time against any Person, including Agent or any Lender Party;

(v) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Guaranteed Obligations or any security therefor;

(vi) any right or defense arising by reason of any claim or defense based upon an election of remedies by Agent or any Lender Party including any defense based upon an impairment or elimination of such Guarantor's rights of subrogation, reimbursement, contribution, or indemnity of such Guarantor against any other Grantor or any guarantors or sureties;

(vii) any change, restructuring, or termination of the corporate, limited liability company, or partnership structure or existence of any Grantor; or

(viii) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor or any other guarantor or surety.

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(i) General Waivers.

(i) Each Guarantor waives any right (except as shall be required by applicable statute and cannot be waived) to require Agent or any Lender Party to (i) proceed against any other Grantor or any other Person, (ii) proceed against or exhaust any security held from any other Grantor or any other Person, or (iii) protect, secure, perfect, or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any other Grantor, any other Person, or any Collateral or other collateral for the Obligations, or (iv) pursue any other remedy in Agent's any Lender Party's power whatsoever. Each Guarantor waives any defense based on or arising out of any defense of any Grantor or any other Person, other than payment of the Guaranteed Obligations to the extent of such payment, based on or arising out of the disability of any Grantor or any other Person, or the validity, legality, or unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Grantor other than payment of the Obligations to the extent of such payment. Agent may, at the election of the Requisite Lenders, foreclose upon any Collateral held by Agent by one or more judicial or nonjudicial sales or other dispositions, whether or not every aspect of any such sale is commercially reasonable or otherwise fails to comply with applicable law or may exercise any other right or remedy Agent or any Lender Party may have against any Grantor or any other Person, or any security, in each case, without affecting or impairing in any way the liability of any of the Guarantors hereunder except to the extent the Guaranteed Obligations have been paid.

(ii) Each Guarantor waives all presentments, demands for performance, protests and notices, including notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Guaranty, and notices of the existence, creation, or incurring of new or additional Obligations or other financial accommodations. Each Guarantor waives notice of any (Default or Event of Default under any of the Loan Documents. Each Guarantor assumes all responsibility for being and keeping itself informed of each Grantor's financial condition and assets and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope, and extent of the risks which each Guarantor assumes and incurs hereunder, and agrees that neither Agent nor any Lender Party shall have any duty to advise any Guarantor of information known to them regarding such circumstances or risks.

(iii) To the fullest extent permitted by applicable law, each Guarantor hereby waives: (A) any right to assert against Agent or any Lender Party any defense (legal or equitable), set-off, counterclaim, or claim which each Guarantor may now or at any time hereafter have against Borrower or any other party liable to Agent or any Lender Party; (B) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Guaranteed Obligations or any security therefor; (C) any right or defense arising by reason of any claim or defense based upon an election of remedies by Agent or any Lender Party including any defense based upon an impairment or elimination of such Guarantor's rights of subrogation, reimbursement, contribution, or indemnity of such Guarantor against Borrower or other guarantors or sureties; and (D) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the

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operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Guarantor's liability hereunder.

(iv) No Guarantor will exercise any rights that it may now or hereafter acquire against any Grantor or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Guaranty, including any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Agent or any Lender Party against any Grantor or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Grantor or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash and the Revolving Loan Commitments have been terminated. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of Agent, for the benefit of Lender Parties, and shall forthwith be paid to Agent to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Credit Agreement, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. Notwithstanding anything to the contrary contained in this Guaranty, no Guarantor may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Grantor (the "Foreclosed Grantor"), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Pledged Equity of such Foreclosed Grantor whether pursuant to this Security Agreement or otherwise

(v) Each Guarantor represents, warrants, and agrees that each of the waivers set forth above is made with full knowledge of its significance and consequences and that if any of such waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective to the maximum extent permitted by law.

(j) Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Grantor to guaranty and otherwise honor all Obligations in respect of Swap Obligations. The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until payment in full of the Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 2(j) constitute, and this Section 2(j) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Grantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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(k) Maximum Liability. Notwithstanding any other provision of this Section 2, the amount guaranteed by each Guarantor hereunder shall be limited to a maximum amount as would not, after giving effect to such maximum amount, render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or comparable Laws. In determining the limitations, if any, on the amount of any Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Guarantor may have under this Section 2, any other agreement or applicable law shall be taken into account. Subject to the restrictions, limitations and other terms of this Security Agreement (including Section 2(i)(iv)), each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment.

### 3. GRANT OF LIEN.

(a) Grant. To secure the prompt and complete payment, performance and observance of all of the Obligations, each Grantor hereby grants to Agent, for the benefit of Agent and Lender Parties, a Lien upon and security interest in all of its right, title and interest in, to and under the following personal property of such Grantor, whether now owned by or owing to, or hereafter acquired by or arising in favor of, such Grantor (including under any trade names, styles or derivations thereof), and whether owned by or consigned by or to, or leased from or to, such Grantor, and regardless of where located (all of which being hereinafter collectively referred to as the "Collateral"), including:

(i)all Accounts;

(ii)all Chattel Paper;

(iii)all Contracts;

(iv)all Deposit Accounts, including all Blocked Accounts, Concentration Accounts, Disbursement Accounts, and all other bank accounts and all funds on deposit therein;

(v)all Documents;

(vi)all Goods (excluding Machinery, Equipment, and Fixtures);

(vii)all Instruments;

(viii)all Letter of Credit Rights;

(ix)all money, cash or cash equivalents;

(x)all Supporting Obligations;

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(xi)all Commercial Tort Claims;

(xii)all business interruption insurance proceeds; and

(xiii)to the extent not otherwise included in the foregoing, all Proceeds, products, tort claims, insurance claims and other rights to payment and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing.

Notwithstanding anything contained in this Security Agreement to the contrary, the term “Collateral” shall not include the Excluded Property.

(b) Setoff. In addition, to secure the prompt and complete payment, performance and observance of the Obligations and in order to induce Agent and Lenders as aforesaid, each Grantor hereby grants to Agent, for the benefit of Agent and Lenders Parties, a right of setoff against the property of such Grantor held by Agent or any Lender Party, including all property described above in Section 3(a) now or hereafter in the possession or custody of, or in transit to, Agent or any Lender, for any purpose (including safekeeping, collection or pledge), for the account of such Grantor, or as to which such Grantor may have any right or power.

#### 4. AGENT’S AND LENDERS’ RIGHTS; LIMITATIONS ON AGENT’S AND LENDERS’ OBLIGATIONS.

(a) No Liability Under Contracts. It is expressly agreed by each Grantor that, anything herein to the contrary notwithstanding, such Grantor shall remain liable under any and all Contracts or License to which it is a party to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither Agent nor any Lender Party shall have any obligation or liability under any such Contract or License by reason of or arising out of this Security Agreement or the granting herein of a Lien thereon or the receipt by Agent or any Lender Party of any payment relating to any such Contract or License pursuant hereto. Neither Agent nor any Lender Party shall be required or obligated in any manner to perform or fulfill any of the obligations of any Grantor under or pursuant to any such Contract or License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any such Contract or License, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

(b) Notifying Account Debtors. Agent may, at any time after an Event of Default shall have occurred and be continuing, without prior notice to any Grantor, notify Account Debtors obligated under Accounts of any Grantor and other Persons obligated on Collateral that Agent has a Lien thereon and that payments thereunder shall be made directly to Agent, for the benefit of Agent and Lender Parties. Furthermore, if Agent determines in the exercise of its good faith credit judgment that Account Debtor’s contra accounts or set off rights may cause Borrowing Availability to be less than zero, Agent may notify Account Debtors that Agent has a Lien thereon, and that payments shall be made directly to Agent, for the benefit of Agent and Lenders. Upon the request of Agent after an Event of Default shall have occurred and

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be continuing, each Grantor shall so notify any such Account Debtor or other Persons obligated on the Collateral, and once any such notice has been given by any Grantor, no Grantor shall give any contrary instructions to such Account Debtor or other Person without Agent's prior written consent.

(c) Verification; Information. Agent may, at any time, in Agent's own name, in the name of a nominee of Agent, in the name of any Grantor or in the name of a nominee of any Grantor, communicate (by mail, telephone, facsimile or otherwise) with Account Debtors obligated under Accounts of such Grantor and other Persons obligated on Collateral to verify with such Persons, to Agent's satisfaction, the existence, amount and terms of, and any other matter relating to, any such Accounts or other Collateral. If an Event of Default shall have occurred and be continuing, each Grantor, at its own expense, shall cause the independent certified public accountants then engaged by such Grantor to prepare and deliver to Agent and each Lender at any time and from time to time promptly upon Agent's request the following reports with respect to each Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as Agent may request. Each Grantor, at its own expense, shall deliver to Agent the results of each physical verification, if any, which such Grantor may in its discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory.

(d) Payments Held in Trust. If, notwithstanding the giving of any notice hereunder directing that payments be made directly to Agent, any Account Debtor of any Grantor or any other Person obligated on Collateral shall make payments to a Grantor, such Grantor shall hold all such payments it receives in trust for Agent, for the benefit of Agent and Lender Parties, without commingling the same with other funds or property of, or held by, such Grantor and shall deliver the same to Agent in the manner set forth in Annex B to the Credit Agreement, in the identical form received, together with any necessary endorsements.

(e) Other Rights. Agent may, at any time after an Event of Default shall have occurred and be continuing, without prior notice to any Grantor and without demand or other process, and without payment of any rent or any other charge, (i) enter the premises of any Grantor and, without breach of the peace, until Agent completes the enforcement of its rights in the Collateral, take possession of such premises or place custodians in exclusive control thereof, remain on such premises and use the same and any Grantor's Equipment for the purpose of collecting or realizing upon any of the Collateral and (ii) exercise any and all of its rights under any and all of the Collateral Documents.

5. REPRESENTATIONS AND WARRANTIES. Each Grantor represents and warrants that:

(a) Rights in the Collateral. Such Grantor has rights in and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder and such Collateral is free and clear of any and all Liens other than Permitted Encumbrances.

(b) Filings. As of the Closing Date, no effective security agreement, financing statement, equivalent security or Lien instrument, continuation statement, or financing

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statement amendment or assignment covering all or any part of the Collateral is on file or of record in any public office, except such as may have been filed (i) by any Grantor in favor of Agent pursuant to this Security Agreement or the other Loan Documents, or (ii) in connection with any other Permitted Encumbrance.

(c) Liens. This Security Agreement is effective to create a valid and continuing Lien upon the Collateral. Upon filing of appropriate financing statements in the jurisdictions listed in Schedule I hereto, Agent, for the benefit of Agent and Lenders, shall have a perfected Lien on the Collateral with respect to which a Lien may be perfected by filing pursuant to the Code, which Lien (i) shall be prior to all other Liens, except Permitted Encumbrances that would be prior to Liens in favor of Agent, for the benefit of Agent and Lender Parties, as a matter of law, and (ii) is enforceable as such as against any and all creditors of, and purchasers from, such Grantor (other than purchasers and lessees of Inventory in the ordinary course of business). All action by such Grantor necessary or desirable to perfect by filing such Lien on each item of the Collateral has been duly taken.

(d) Instruments, Letter of Credit Rights and Chattel Paper. As of the Closing Date, Schedule II hereto lists all Instruments, Letter of Credit Rights and Chattel Paper of each Grantor. All action by such Grantor necessary or desirable to protect and perfect the Lien in favor of Agent on each item of Collateral set forth in Schedule II (including the delivery of all originals thereof to Agent and the legending of all such Chattel Paper for amounts over \$100,000 as required by Section 6(b) hereof) has been duly taken. The Lien in favor of Agent, for the benefit of Agent and Lender Parties, on the Collateral listed in Schedule II hereto is prior to all other Liens, except Permitted Encumbrances that would be prior to the Liens in favor of Agent as a matter of law, and is enforceable as such against any and all creditors of and purchasers from such Grantor.

(e) Grantor Information; Locations of Collateral and Records. As of the Closing Date, each Grantor's name as it appears in official filings in its jurisdiction of organization, the type of entity of such Grantor (including corporation, partnership, limited partnership or limited liability company), organizational identification number issued by each Grantor's jurisdiction of organization or a statement that no such number has been issued, each Grantor's jurisdiction of organization, the location of each Grantor's chief executive office, principal place of business, corporate or other offices, all warehouses and premises where tangible Collateral is stored or located, and the locations of its books and records concerning the Collateral are set forth in Schedule III hereto. Each Grantor has only one jurisdiction of organization.

(f) Accounts. With respect to any Account of such Grantor, except as specifically disclosed in the most recent Collateral Report delivered to Agent: (i) such Account represents a bona fide sale of Inventory or rendering of services to the applicable Account Debtor in the ordinary course of such Grantor's business and is not evidenced by a judgment, Instrument or Chattel Paper; (ii) there are no setoffs, claims or disputes existing or asserted with respect thereto and such Grantor has made no agreement with the applicable Account Debtor for any extension of time for the payment thereof, any compromise or settlement for less than the

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full amount thereof, any release of such Account Debtor from liability therefor, or any deduction therefrom except a discount or allowance allowed by such Grantor in the ordinary course of its business for prompt payment and disclosed to Agent; (iii) to such Grantor's knowledge, there are no facts, events or occurrences that in any way impair the validity or enforceability thereof or could reasonably be expected to reduce the amount payable thereunder as shown on such Grantor's books and records and any invoices, statements and Collateral Reports delivered to Agent and Lenders with respect thereto; (iv) such Grantor has received no notice of proceedings or actions that are threatened or pending against the applicable Account Debtor that might result in any material adverse change in such Account Debtor's financial condition; and (v) such Grantor has no knowledge that the applicable Account Debtor is unable generally to pay its debts as they become due. In addition, with respect to any Account of any Grantor: (A) the amounts reflected on all records, invoices, statements and Collateral Reports that may be delivered to Agent with respect thereto are actually and absolutely owing to such Grantor as indicated thereon and are not in any way contingent; (B) no payments have been or shall be made thereon except payments made in accordance with the requirements of Annex B to the Credit Agreement; and (C) to such Grantor's knowledge, the applicable Account Debtor has the capacity to contract.

(g) Inventory. With respect to any Inventory of such Grantor, except as specifically disclosed in the most recent Collateral Report delivered to Agent pursuant to the terms of this Security Agreement or the Credit Agreement: (i) such Inventory is located at one of such Grantor's locations set forth in Schedule III hereto (as such Schedule III may be modified and updated from time to time by written notice to Agent), except for inventory which, in the ordinary course of business, is in transit either (x) from a supplier to such Grantor, (y) between the locations specified in Schedule III, or (z) to customers of such Grantor; (ii) such Inventory is not now stored, nor shall at any time or times hereafter be stored, at any leased location without Agent's prior written consent, and if Agent provides such consent, each applicable Grantor will concurrently therewith obtain, to the extent required by the Credit Agreement, a landlord agreement in form and substance reasonably satisfactory to Agent in place with respect to such location; (iii) such Inventory is not now stored, nor shall at any time or times hereafter be stored, with a bailee or warehousemen without, to the extent required by the Credit Agreement, a bailee letter delivered to Agent in form and substance reasonably satisfactory to Agent; (iv) such Inventory is not now located, nor shall at any time or times hereafter be located, at a location subject to a mortgage in favor of a lender other than Agent without, to the extent required by the Credit Agreement, a mortgagee waiver delivered to Agent in form and substance reasonably satisfactory to Agent; (v) such Grantor has good, indefeasible and merchantable title to such Inventory and such Inventory is not subject to any Lien or document whatsoever except for the Lien granted to Agent hereunder, for the benefit of Agent and Lenders, and except for Permitted Encumbrances; (vi) except as specifically disclosed in the most recent Collateral Report delivered to Agent, such Inventory constitutes Eligible Inventory of good and merchantable quality; (vii) such Inventory is not subject to any licensing, patent, royalty, trademark, trade name or copyright agreements with any third parties that would require any consent of any third party upon sale or disposition of such Inventory or the payment of any monies to any third party upon such sale or other disposition; and (viii) the completion of manufacture, sale or other disposition of such Inventory by Agent following an Event of Default shall not require the

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consent of any Person and shall not constitute a breach or default under any Contract or agreement to which such Grantor is a party or to which such Inventory is subject.

(h) Survival. The representations and warranties set forth in this Section 5 shall survive the execution and delivery of this Security Agreement.

6. COVENANTS. Each Grantor covenants and agrees with Agent, for the benefit of Agent and Lenders, that from and after the date of this Security Agreement and until the Termination Date:

(a) Further Assurances; Pledge of Instruments; Chattel Paper.

(i) At any time and from time to time, upon the written request of Agent and at the sole expense of Grantors, such Grantor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further actions as Agent may deem desirable to obtain the full benefits of this Security Agreement and of the rights and powers herein granted, including (A) using its commercially reasonable efforts to secure all consents and approvals necessary or appropriate for the assignment to or for the benefit of Agent of any License or Contract held by such Grantor and to enforce the Liens, granted hereunder and (B) filing any financing or continuation statements under the Code with respect to the Liens granted hereunder or under any other Loan Document.

(ii) Unless Agent shall otherwise consent in writing (which consent may be revoked by Agent at any time in its sole discretion), such Grantor shall deliver to Agent all Collateral consisting of negotiable Documents, certificated securities, Chattel Paper, Letter of Credit Rights and Instruments (in each case, accompanied by stock powers, allonges or other instruments of transfer, as applicable, executed in blank) promptly after such Grantor receives the same.

(iii) If any Grantor is or becomes the beneficiary of a letter of credit, then such Grantor shall promptly, and in any event within two Business Days after becoming such a beneficiary, notify Agent thereof and enter into a tri-party agreement with Agent and the issuer or confirmation bank with respect all to Letter of Credit Rights in connection with such letter of credit, assigning such Letter of Credit Rights to Agent and directing all payments thereunder to the Collection Account or another bank account designated by Agent, which tri-party agreement shall be in form and substance reasonably satisfactory to Agent.

(iv) Such Grantor shall take all steps necessary to grant Agent control of all electronic chattel paper in accordance with the Code and all “transferable records” as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act.

(v) Such Grantor hereby irrevocably authorizes Agent at any time and from time to time to file in any filing office in any jurisdiction with respect to the Lien created hereby any initial financing statement and any amendment thereto that (A) describes the Collateral, and (B) contains any other information required by part 5 of Article 9 of the Code for the sufficiency

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or filing office acceptance of any financing statement or amendment, including whether such Grantor is an organization, the type of organization of such Grantor and any organization identification number issued to such Grantor. Each Grantor agrees to furnish any such information to Agent promptly upon Agent's request therefor. Each Grantor also ratifies its authorization for Agent to have filed in any jurisdiction with respect to the Lien created hereby any initial statement or amendment thereto if filed prior to the date hereof.

(vi) Such Grantor shall promptly, and in any event within two Business Days after such Grantor becomes aware of its acquisition of any Commercial Tort Claim, notify Agent of such claim acquired by it and unless otherwise consented to by Agent, such Grantor shall enter into a supplement to this Security Agreement, granting to Agent a Lien on such claim.

(b) Maintenance of Books and Records. Such Grantor shall keep and maintain, at its own cost and expense, satisfactory and complete records of each item of Collateral to which it purports to grant a Lien hereunder, including a record of any and all payments received and any and all credits granted with respect to each such item of Collateral and all other dealings with respect to each such item of Collateral. Such Grantor shall mark its books and records pertaining to each such item of Collateral to evidence this Security Agreement and the Liens granted hereby. If any Grantor retains possession of any Chattel Paper or Instruments for an amount in excess of \$100,000, with Agent's consent, such Chattel Paper or Instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the Lien of Fifth Third Bank, National Association, as Agent, for the benefit of Agent and certain Lenders."

(c) Acquisition Document Undertakings.

(i) Such Grantor shall keep Agent informed of all circumstances bearing upon any claim under or with respect to the Acquisition Documents and the Acquisition Document Undertakings and such Grantor shall not, without the prior written consent of Agent, (i) waive any of its rights or remedies under any Acquisition Document with respect to any of the Acquisition Document Undertakings, (ii) settle, compromise or offset any amount payable by the sellers to such Grantor under any Acquisition Document or (iii) amend or otherwise modify any Acquisition Document in any manner which is materially adverse to the interests of Agent or any Lender.

(ii) Such Grantor shall perform and observe in all respects all of the terms and conditions of each Acquisition Document to be performed by it, maintain each Acquisition Document in full force and effect (other than termination in accordance with its terms), enforce each Acquisition Document in accordance with its terms, and take all such action to such end as may from time to time be reasonably requested by Agent.

(iii) Anything herein to the contrary notwithstanding, (i) such Grantor shall remain liable under each applicable Acquisition Document to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed, (ii) the exercise by Agent of any of its rights hereunder shall not release such Grantor from any of its duties or obligations under any Acquisition Document

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and (iii) neither Agent nor any other Lender shall have any obligation or liability under any Acquisition Document by reason of this Security Agreement, nor shall Agent or any other Lender be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(d) Locations. Such Grantor shall give Agent at least twenty (20) days prior written notice of any (a) intention to relocate the tangible Collateral (other than if such Collateral is Collateral in transit, out for repair or servicing, in the possession of employees, or intangible Collateral) or any of the records relating to the Collateral from the locations listed on Schedule III attached to this Security Agreement, and (b) intention to acquire any new location where records of such Grantor with respect to the Collateral are located or any tangible Collateral is located, and shall submit to Agent an updated Schedule III to reflect such additional new locations (provided such Grantor's failure to do so shall not impair Agent's Lien thereon). Any additional filings or re-filings reasonably requested by Agent as a result of any such relocation in order to maintain the Agent's Lien on the Collateral shall be at the Grantors' joint and several expense.

(e) Indemnification. In any suit, proceeding or action brought by Agent or any Lender Party relating to any Collateral for any sum owing with respect thereto (to the extent Agent or such Lender Party is entitled to bring such suit, proceedings or action pursuant to the terms hereof or under applicable law) or to enforce any rights or claims with respect thereto, each Grantor shall save, indemnify and hold Agent and Lender Parties harmless from and against all expenses (including reasonable attorneys' fees and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of any Person obligated on the Collateral, arising out of a breach by such Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to, or in favor of, such obligor or its successors by such Grantor, except in the case of Agent or any Lender Party, to the extent such expense, loss, or damage is attributable solely to the gross negligence or willful misconduct of Agent or any Lender Party as finally determined by a court of competent jurisdiction. All such obligations of such Grantor shall be and remain enforceable against and only against such Grantor and shall not be enforceable against Agent or any Lender Party.

(f) Compliance with Terms of Accounts and Agreements. Such Grantor shall perform and comply with all obligations in respect of the Collateral and all other agreements to which it is a party or by which it is bound relating to the Collateral, except where such non-performance or non-compliance could not reasonably be expected to result in a Material Adverse Effect.

(g) Limitation on Liens on Collateral. Such Grantor shall not create, incur, assume or permit to exist, and such Grantor shall defend the Collateral against, and take such other action as is necessary to remove, any Lien upon the Collateral except Permitted Encumbrances, and shall defend the right, title and interest of Agent and Lender Parties in and to such Grantor's rights under the Collateral against the claims and demands of all Persons.

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(h) Limitations on Disposition. Such Grantor shall not sell, lease, license, transfer or otherwise dispose of any of the Collateral, or attempt or contract to do so, except as permitted by the Credit Agreement.

(i) Further Identification of Collateral. Such Grantor shall, if so requested by Agent, furnish to Agent, as often as Agent reasonably requests, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Agent may reasonably request, all in such detail as Agent may specify.

(j) Notices. Such Grantor shall advise Agent promptly, in detail, (i) of any Lien (other than Permitted Encumbrances) or claim made or asserted against any of the Collateral, and (ii) of the occurrence of any other event that would have a Material Adverse Effect on the aggregate value of the Collateral or on the Liens created hereunder or under any other Loan Document.

(k) Good Standing Certificates. Not more often than once during each fiscal year, upon the written request of Agent, each Grantor shall provide to Agent a certificate of good standing from its jurisdiction of organization.

(l) No Reorganization. Without limiting the prohibitions on mergers involving Grantors contained in the Credit Agreement, no Grantor shall reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is organized as of the Closing Date without the prior written consent of Agent.

(m) Terminations; Amendments Not Authorized. Each Grantor acknowledges and agrees that it will not file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Agent, subject to such Grantor's rights under Section 9-509(d)(2) of the Code.

(n) Authorized Terminations. Agent will promptly deliver to each Grantor for filing or authorize each Grantor to prepare and file termination statements and releases in accordance with 11.9 of the Credit Agreement.

7. AGENT'S APPOINTMENT AS ATTORNEY-IN-FACT. Each Grantor hereby irrevocably constitutes and appoints Agent (and all officers, employees or agent designated by Agent), with full power of substitution, as such Grantor's true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, from time to time in Agent's discretion, to take any and all appropriate action and to execute and deliver any and all documents and Instruments that may be necessary or desirable to accomplish the purposes of the Loan Documents and, without limiting the generality of the foregoing, such Grantor hereby grants to Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, and at any time, to do the following, subject to any limitation expressly provided for in the Credit Agreement or any other Loan Document: (a) change the mailing address of such Grantor, open a post office box on behalf of such Grantor, open mail for such Grantor, and ask, demand, collect, give acquittances and receipts for, take possession of, or endorse and receive payment of, any checks, drafts, notes,

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acceptances, or other Instruments for the payment of moneys due, and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices in connection with any of the Collateral; (b) effect any repairs to any of the Collateral, or continue or obtain any insurance and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) pay or discharge any Taxes or Liens (other than Liens permitted under this Security Agreement or the Credit Agreement) levied or placed on or threatened against such Grantor or the Collateral; (d) defend any suit, action or proceeding brought against such Grantor if such Grantor does not defend such suit, action or proceeding or if Agent believes that such Grantor is not pursuing such defense in a manner that will maximize the recovery to Agent, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Agent may deem appropriate; (e) file or prosecute any claim, litigation, suit or proceeding in any court of competent jurisdiction or before any arbitrator, or take any other action otherwise deemed appropriate by Agent for the purpose of collecting any and all such moneys due to such Grantor whenever payable and to enforce any other right in respect of the Collateral; (f) sell, transfer, pledge, make any agreement with respect to, or otherwise deal with, any Collateral, and execute, in connection with such sale or action, any endorsements, assignments or other instruments of conveyance or transfer in connection therewith; (g) cause the certified public accountants then engaged by such Grantor to prepare and deliver to Agent at any time and from time to time, promptly upon Agent's request, the following reports: (i) a reconciliation of all of its Accounts, (ii) an aging of all such Accounts; (iii) trial balances; (iv) test verifications of such Accounts as Agent may request; and (v) the results of each physical verification of its Inventory; (h) communicate in its own name with any Account Debtors of such Grantor, parties to any Contracts of such Grantor or other obligors of such Grantor in respect of Instruments or Chattel Paper of such Grantor with regard to the assignment of the right, title and interest of such Grantor in, to and under such Accounts, Contracts, Instruments, Chattel Paper, General Intangibles and other matters relating thereto; (i) file such financing statements with respect to the Security Agreement, with or without such Grantor's signature, or file a photocopy of this Security Agreement in substitution for a financing statement, as Agent may deem appropriate and to execute in Grantor's name such financing statements and amendments thereto and continuation statements that may require such Grantor's signature; (j) execute, in connection with any sale provided for in any Loan Document, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral and to otherwise direct such sale or resale, all as though Agent were the absolute owner of the Collateral for all purposes; and (k) do, at Agent's option and such Grantor's expense, at any time or from time to time, all acts and other things that Agent reasonably deems necessary to perfect, preserve, or realize upon the Collateral and Agent's Liens thereon, all as fully and effectively as such Grantor might do. Each Grantor hereby ratifies, to the extent permitted by law, all that said Agent shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein is a power coupled with an interest and shall be irrevocable until the Termination Date. The powers conferred on Agent pursuant to this Section 7, for the benefit of Agent and Lenders, are solely to protect Agent's Liens upon and interests in the Collateral (for the benefit of Agent and Lenders) and shall not impose any duty upon Agent or any Lender to exercise any such powers except as otherwise expressly provided for therein. Agent agrees that (a) except for the powers granted in clause (i)

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above, it shall not exercise any power or authority granted pursuant to this Section 7 unless an Event of Default has occurred and is continuing, and (b) Agent shall account for any moneys received by Agent in respect of any foreclosure on or disposition of any of the Collateral pursuant to the powers of attorney granted herein; *provided*, that, except as set forth in Section 10, neither Agent nor any Lender shall have any duty as to any Collateral except as otherwise expressly required under applicable law, and Agent and Lenders shall be accountable only for amounts that they actually receive as a result of the exercise of such powers. NONE OF AGENT, LENDERS OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO ANY GRANTOR FOR ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

8. REMEDIES; RIGHTS UPON DEFAULT.

(a) Remedies Generally. If any Event of Default shall have occurred and be continuing:

(i) In addition to all other rights and remedies granted to it under this Security Agreement, the, Credit Agreement, the other Loan Documents and under any other instrument or agreement securing, evidencing or relating to any of the Obligations, Agent may exercise all rights and remedies of a secured party under the Code. Without limiting the generality of the foregoing, each Grantor expressly agrees that in any such event Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified in clause (ii) below of the time and place of any public or private sale) to or upon such Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code and other applicable law), may immediately enter upon the premises of such Grantor where any Collateral is located through self-help, without judicial process, without first obtaining a final judgment or giving such Grantor or any other Person notice and an opportunity for a hearing on Agent's claim or action and may collect, receive, assemble, process, appropriate and realize upon the Collateral, or any part thereof, and may sell, lease, license, assign, give an option or options to purchase, sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at a public or private sale or sales, or at any exchange, at such prices as it may deem appropriate, for cash or on credit or for future delivery without assumption of any credit risk. Agent or any Lender shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase, for the benefit of Agent and Lenders, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption each Grantor hereby releases. Such sales may be adjourned or continued from time to time with or without notice. Agent shall have the right to conduct such sales on any Grantor's premises or elsewhere and shall have the right to use any Grantor's premises without charge for such sales at such time or times as Agent deems necessary or advisable.

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(ii) Each Grantor further agrees, at Agent's request, to assemble the Collateral and make it available to Agent at a place or places designated by Agent as convenient to Agent and such Grantor, whether at such Grantor's premises or elsewhere. Until Agent is able to effect a sale, lease, or other disposition of Collateral, Agent shall have the right to hold or use the Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by Agent. Agent shall have no obligation to any Grantor to maintain or preserve the rights of such Grantor as against third parties with respect to Collateral while Collateral is in the possession of Agent. Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of Agent's remedies (for the benefit of Agent and Lenders), without, except as may be required by applicable state laws, prior notice or hearing as to such appointment. Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale to the Obligations as provided in the Credit Agreement, and only after so paying over such net proceeds, and after the payment by Agent of any other amount required by any provision of law, need Agent account for the surplus, if any, to any Grantor. Each Grantor waives, to the maximum extent permitted by applicable law, all claims, damages, and demands against Agent or any Lender arising out of the repossession, retention or sale of the Collateral except such as arise solely out of the gross negligence or willful misconduct of Agent or such Lender as finally determined by a court of competent jurisdiction. Each Grantor agrees that 10 days' prior notice by Agent of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters. To the extent not prohibited by law, Grantors shall remain jointly and severally liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations, including any reasonable attorneys' fees or other expenses incurred by Agent or any Lender to collect such deficiency.

(b) Waivers. Except as otherwise specifically provided herein, each Grantor hereby waives (to the maximum extent permitted by applicable law) presentment, demand, protest or any notice of any kind in connection with this Security Agreement or any Collateral.

(c) Commercial Reasonableness. To the extent that applicable law imposes duties on Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for Agent (i) to fail to incur expenses deemed significant by Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire

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one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure Agent against risks of loss, collection or disposition of Collateral or to provide to Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 8(c) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in Agent's exercise of remedies against the Collateral and that other actions or omissions by Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8(c). Without limiting the generality of the foregoing, nothing contained in this Section 8(c) shall be construed to grant any rights to any Grantor or to impose any duties on Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 8(c).

(d) Waiver of Certain Defenses. To the extent not prohibited by law, neither Agent nor any Lender Party shall be required to make any demand upon, or pursue or exhaust any of its respective rights or remedies against, any Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Obligations or to pursue or exhaust any of its respective rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof. Neither Agent nor any Lender Party shall be required to marshal the Collateral or any guarantee of the Obligations or to resort to the Collateral or any such guarantee in any particular order, and all of its respective rights hereunder or under any other Loan Document shall be cumulative. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against Agent or any Lender Party, any valuation, stay, appraisement, extension, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing that, but for this provision, might be applicable to the sale of any Collateral made pursuant to the judgment, order or decree of any court, or privately pursuant to the power of sale conferred by this Security Agreement, or otherwise.

9. GRANT OF LICENSE TO USE INTELLECTUAL PROPERTY. Solely for the purpose of enabling Agent to exercise its rights and remedies under Section 8 hereof (including, without limiting the terms of Section 8 hereof, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Collateral) at such time or times as Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to Agent, for the benefit of Agent and Lender Parties, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to such Grantor) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in

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such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

10. LIMITATION ON AGENT'S AND LENDERS' DUTIES IN RESPECT OF COLLATERAL. Each of Agent and each Lender shall use reasonable care with respect to the Collateral in its possession or under its control. Neither Agent nor any Lender shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of Agent or such Lender, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

11. REINSTATEMENT. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors, or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent transfer," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

12. NOTICES. Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give or serve upon any other party any communication with respect to this Security Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be given in the manner, and deemed received, as provided for in the Credit Agreement.

13. SEVERABILITY. Whenever possible, each provision of this Security Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. This Security Agreement is to be read, construed and applied together with the Credit Agreement and the other Loan Documents which, taken together, set forth the complete understanding and agreement of Agent, Lenders and Grantors with respect to the matters referred to herein and therein.

14. NO WAIVER; CUMULATIVE REMEDIES. Neither Agent nor any Lender shall by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing and signed by Agent, and then only to the extent therein set forth. A waiver by Agent of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that Agent would

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otherwise have on any future occasion. No failure by Agent or any Lender to exercise, nor any delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided hereunder are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law. None of the terms or provisions of this Security Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by Agent and each Grantor.

15. LIMITATION BY LAW. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of Law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of Law that may be controlling and to be limited to the extent necessary so that they do not render this Security Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable Law.

16. TERMINATION OF THIS SECURITY AGREEMENT. Subject to Section 11 hereof, this Security Agreement shall terminate upon the Termination Date.

17. SUCCESSORS AND ASSIGNS. This Security Agreement and all obligations of Grantors hereunder shall be binding upon the successors and assigns of each Grantor (including any debtor-in-possession on behalf of such Grantor) and shall, together with the rights and remedies of Agent, for the benefit of Agent and Lenders, hereunder, inure to the benefit of Agent and Lenders, all future holders of any Instrument evidencing any of the Obligations and their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or Instrument evidencing any of the Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to Agent, for the benefit of Agent and Lender Parties, hereunder. No Grantor may assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Security Agreement.

18. COUNTERPARTS. This Security Agreement may be authenticated in any number of separate counterparts, each of which shall collectively and separately constitute one and the same agreement. This Security Agreement may be authenticated by manual signature, facsimile or, if approved in writing by Agent, electronic means, all of which shall be equally valid. Delivery of an executed signature page of this Security Agreement by facsimile transmission or by electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

19. GOVERNING LAW. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OHIO (WITHOUT REGARD TO THE PRINCIPLES THEREOF

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REGARDING CONFLICT OF LAWS), AND ANY APPLICABLE LAWS OF THE UNITED STATES. EACH GRANTOR HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN HAMILTON COUNTY, STATE OF OHIO, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES AMONG GRANTORS, AGENT AND LENDERS PERTAINING TO THIS SECURITY AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; *PROVIDED*, THAT AGENT, LENDERS AND GRANTORS ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF HAMILTON COUNTY; *PROVIDED, FURTHER*, THAT NOTHING IN THIS SECURITY AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF AGENT. EACH GRANTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH GRANTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH GRANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH GRANTOR AT THE ADDRESS SET FORTH ON ITS SIGNATURE PAGE TO THE CREDIT AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH GRANTOR'S ACTUAL RECEIPT THEREOF OR THREE DAYS AFTER DEPOSIT IN THE UNITED STATES MAIL, PROPER POSTAGE PREPAID.

20. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE. Section 12.12 of the Credit Agreement is incorporated herein by reference mutatis mutandis.

21. SECTION TITLES. The Section titles contained in this Security Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

22. NO STRICT CONSTRUCTION. The parties hereto have participated jointly in the negotiation and drafting of this Security Agreement. In the event an ambiguity or question of intent or interpretation arises, this Security Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Security Agreement.

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23. ADVICE OF COUNSEL. Each of the parties hereto represents to each other party hereto that it has discussed this Security Agreement (and, specifically, the provisions of Sections 19 and 20) with its counsel.

24. BENEFIT OF LENDER PARTIES. All Liens granted or contemplated hereby shall be for the benefit of Agent, individually, and Lender Parties, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Obligations in accordance with the terms of the Credit Agreement.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

**“Grantors”**

THE DIXIE GROUP, INC.

By:  
Name:  
Title:

TDG OPERATIONS, LLC

By:  
  
Name:  
Title:

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**“Agent”**

FIFTH THIRD BANK, NATIONAL ASSOCIATION

By:  
Name:  
Title:



**CONTACT:** Allen Danzey  
Chief Financial Officer  
706-876-5865  
[allen.danzey@dixiegroup.com](mailto:allen.danzey@dixiegroup.com)

## THE DIXIE GROUP ANNOUNCES NEW SENIOR CREDIT FACILITY

**DALTON, GEORGIA (November 2, 2020)** - The Dixie Group, Inc. (Nasdaq: DXYN) today announced the successful negotiation of a \$75 million, five year, senior secured revolving credit facility with Fifth Third Bank National Association providing for borrowing based on percentages of values of the Company's accounts receivable and inventory, and secured by a first priority interest in the Company's accounts receivable and inventory. Maturing five years from the date of close, the Fifth Third facility will replace the Company's current secured credit facility with Wells Fargo Finance scheduled to mature in 2021. Availability under the new arrangement will be approximately \$45 million as of October 30, 2020.

The Company also announced entry into two additional credit facilities: a \$10 million principal amount 25-year term loan with AmeriState Bank, secured by a first mortgage on the Company's Atmore, Alabama and Roanoke, Alabama facilities, and a \$15 million 10-year loan with Greater Nevada Credit Union secured by the Company's machinery and equipment, and a second lien on the Atmore and Roanoke Facilities. The AmeriState loan bears straight line amortization over the 25-year term, and the Greater Nevada Credit Union loan amortizes straight line over the last seven years of its ten year term.

Together, the Fifth Third Facility and the AmeriState and Greater Nevada Credit Union loans will serve to consolidate and replace most of the Company's existing credit arrangements.

Commenting on the announcement, Chairman and Chief Executive Officer Daniel K. Frierson stated: "Management is pleased to announce entry into these credit facilities. This provides us secured financing over the next five to twenty five years. The simplified debt structure and substantial increase in availability will afford the Company the credit it needs to address challenges we may face in the future and to fund growth in the Company's residential hard and soft surface businesses."

The Dixie Group ([www.thedixiegroup.com](http://www.thedixiegroup.com)) is a leading marketer and manufacturer of carpet and rugs to higher-end residential and commercial customers through the Fabrica International, Masland Carpets, Dixie Home, AtlasMasland and Dixie International brands.

This press release contains forward-looking statements. Forward-looking statements are based on estimates, projections, beliefs and assumptions of management and the Company at the time of such statements and are not guarantees of performance. Forward-looking statements are subject to risk factors and uncertainties that could cause actual results to differ materially from those indicated in such forward-looking statements. Such factors include the levels of demand for the products produced by the Company. Other factors that could affect the Company's results include, but are not limited to, availability of raw material and transportation costs related to petroleum prices, the cost and availability of capital, integration of acquisitions, ability to attract, develop and retain qualified personnel and general economic and competitive conditions related to the Company's business. Issues related to the availability and price of energy may adversely affect the Company's operations. Additional information regarding these and other risk factors and uncertainties may be found in the Company's filings with the Securities and Exchange Commission. The Company disclaims any obligation to update or revise any forward-looking statements based on the occurrence of future events, the receipt of new information, or otherwise.

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