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# DELTA REPORT

## 10-K

SPTN - SPARTANNASH CO

10-K - DECEMBER 30, 2023 COMPARED TO 10-K - DECEMBER 31, 2022

The following comparison report has been automatically generated

TOTAL DELTAS 7215

■ CHANGES 357

■ DELETIONS 4853

■ ADDITIONS 2005

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

FORM 10-K

Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended December 31, 30, 2022 2023.

OR

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from to .

Commission File Number: 000-31127

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SPARTANNASH COMPANY

(Exact Name of Registrant as Specified in Its Charter)

Michigan 38-0593940  
(State or Other Jurisdiction) of (I.R.S. Employer  
Incorporation or Organization) Identification No.)

850 76th Street, S.W.  
P.O. Box 8700  
Grand Rapids, Michigan 49518-8700  
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (616) 878-2000

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

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

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

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

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

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

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

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

Large accelerated  Accelerated filer  Non-accelerated  Smaller reporting  Emerging growth   
filer filer company company

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

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

Yes  No

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

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

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

The aggregate market value of the registrant's voting and non-voting common equity held by non-affiliates based on the last sales price of such stock on the Nasdaq Global Select Market on July 15, 2022 July 14, 2023 (which was the last trading day of the registrant's second quarter in the fiscal year ended December 31, 2022 December 30, 2023) was \$1,119,947,910 722,477,443.

The number of shares outstanding of the registrant's Common Stock, no par value, as of February 27, 2023 February 26, 2024 was 35,061,566 34,618,147, all of one class.

#### DOCUMENTS INCORPORATED BY REFERENCE

Part III, Items 10, 11, 12, 13 and 14

Definitive Proxy Statement for the 2023 2024 Annual Meeting

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#### Forward-Looking Statements

The matters discussed in this Annual Report on Form 10-K, in the Company's press releases, and in the Company's website-accessible conference calls with analysts and investor presentations include "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended ("Exchange Act"), about the plans, strategies, objectives, goals or expectations of SpartanNash and its subsidiaries ("SpartanNash" or the "Company"). These forward-looking statements may be identifiable by words or phrases indicating that the Company or management "expects," "projects," "anticipates," "plans," "believes," "intends," or "estimates," or that a particular occurrence or event "may," "could," "should," "will" or "will likely" result, occur or be pursued or "continue" in the future, that the "outlook," "trend," "guidance" or "target" is toward a particular result or occurrence, that a development is an "opportunity," "priority," "strategy," "focus," that the Company is "positioned" for a particular result, or similarly stated expectations. Accounting estimates, such as those described under the heading "Critical Accounting Policies and Estimates" in Item 7 of this Annual Report on Form 10-K, are inherently forward-looking. The Company's asset impairment and restructuring cost provisions are estimates and actual costs may be more or less than these estimates and differences may be material. Undue reliance should not be placed on these forward-looking statements, which speak only as of the date of the Annual Report, other report, release, presentation, or statement. Forward-looking statements are necessarily based on estimates and assumptions that are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which, with respect to future business decisions, are subject to change. These uncertainties and contingencies may affect actual results and could cause actual results to differ materially.

This section and the discussions contained in Item 1A "Risk Factors" of this Annual Report on Form 10-K, are intended to provide meaningful cautionary statements for purposes of the safe harbor provision of the Private Securities Litigation Reform Act of 1995. This should not be construed as a complete list of all the economic, competitive, governmental, technological and other factors that could adversely affect the Company's expected consolidated financial position, results of operations or liquidity. Additional risks and uncertainties not currently known to SpartanNash or that SpartanNash currently believes are immaterial also may impair its business, operations, liquidity, financial condition and prospects. The Company undertakes no obligation to update or revise its forward-looking statements to reflect developments that occur, or information obtained after the date of this Annual Report. In addition, historical information should not be considered as an indicator of future performance.

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## PART I

### Item 1. Business

#### Overview

SpartanNash Company (together with its subsidiaries, "SpartanNash" or the "Company") is a food solutions company that delivers the ingredients for a better life. Its core businesses include distributing grocery products to a diverse group of independent and chain retailers, its corporate-owned retail stores, and U.S. military commissaries and exchanges; as well as operating a premier fresh produce distribution network and the *Our Family® Family®* private label brand. SpartanNash serves customer locations in all 50 states and the District of Columbia, Europe, Cuba, Puerto Rico, Honduras, Iraq, Kuwait, Bahrain, Qatar, Djibouti, Korea and Japan. The Company owns and operates 147 144 supermarkets and shares its operational insights to drive solutions for its food retail independent customers. While the Company supports overseas commissaries and exchanges, all of the Company's sales and assets are in the United States of America.

At the beginning of the third quarter of 2022, the The Company combined the previous Food Distribution and Military operating segments into one operating segment: Wholesale. The change in the operating segments was driven by both a change in the Company's organizational structure, and in the reporting utilized by the Chief Operating Decision Maker to allocate the Company's resources and assess operating performance. The combination of the two segments reflects the way the Company manages the distribution business as one comprehensive network and furthers the Company's efforts to streamline operations in connection with its supply chain transformation and better serve customers. As a result, the Company now operates two reportable segments: Wholesale and Retail. These reportable segments are two distinct businesses, each with a different customer base, management structure, and basis for determining budgets, forecasts, and compensation. Segment Where applicable, segment financial information for the comparative prior year periods within this annual report has been recast to reflect this change. our current reportable segment structure.

The Company's fiscal year end is the Saturday closest to December 31. In this report we discuss information as of and for the fiscal years ending or ended December 28, 2024 ("2024"), December 30, 2023 ("2023" ("2023" or "current year"), December 31, 2022 ("2022" or "current year"), January 1, 2022 ("2021" or "prior year") and January 2, 2021 January 1, 2022 ("2020" 2021"), all of which include 52 weeks, with the exception of 2020, which includes 53 weeks. All fiscal quarters are 12 weeks, except for the Company's first quarter, which is 16 weeks and usually includes the Easter holiday. As a result of fiscal 2020 containing 53 weeks, the fourth quarter of fiscal 2020 contained 13 weeks. The fourth quarter includes the Thanksgiving and Christmas holidays, and depending on the fiscal year end, may include the New Year's holiday.

The Company's differentiated business model of Wholesale and Retail operations leverages the complementary nature of both segments and supports the ability of the Company's independent retail customers to compete in the grocery industry in the long-term. The model produces operational efficiencies, greater visibility and broader business growth options throughout each of the segments.

SpartanNash has a strategic identity called *Our Winning Recipe*<sup>™</sup> that activates its mission to deliver the ingredients for a better life through a focus on core capabilities, behaviors and strategic priorities. SpartanNash has a keen focus on its core capabilities which include: people, operational excellence and insights that drive solutions. The Company's vision is seeing a day when its customers say, "I can't live without them."

#### **Wholesale Segment**

The Company's Wholesale segment uses a multi-channel sales approach to distribute national brand and **its own** private brand products to independent retailers, national accounts, food service distributors, e-commerce providers, and the Company's **corporate owned corporate-owned** retail stores. The Company's Wholesale segment also contracts with manufacturers and brokers to distribute a wide variety of grocery products to 160 U.S. military commissaries and over 400 exchanges worldwide. Together with its third-party partner, Coastal Pacific Food Distributors ("CPFD"), SpartanNash represents the only global delivery solution to service the Defense Commissary Agency ("DeCA" or "the Agency"). Total net sales from the Company's Wholesale segment, including sales of **\$1.2 billion to corporate owned corporate-owned** retail stores that are eliminated in the consolidated financial statements, totaled **\$8.0 billion \$8.1 billion** for **2022, 2023**. As of the end of **2022, 2023**, the Company is among the five largest wholesale distributors in the nation in terms of annual revenue. The Company is focused on growth in its Wholesale segment, through expanded relationships with existing customers as well as new business opportunities.

As of **December 31, 2022 December 30, 2023**, the Company operated in all 50 states by leveraging a network of 19 distribution centers, in addition to a facility on the West Coast operated by third-party partner, CPFD, as well as internal transportation fleets and third-party shipping partners, servicing the Wholesale segment. The Company's extensive geographic reach drives economies of scale, provides opportunities for independent retailers to purchase products at competitive prices in order to effectively compete in the grocery industry in the **long-term and long-term. The Company's network also** includes distribution centers strategically located among the largest concentration of military bases the Company serves and near Atlantic ports used to ship grocery products to overseas commissaries and exchanges.

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The Company's Wholesale segment provides a selection of approximately **85,500 90,700** stock-keeping units (SKUs) of **nationally branded national brand** and private brand grocery products and perishable food products, including dry groceries, produce, dairy products, meat, delicatessen items, bakery goods, frozen food, and seafood, as well as floral products, general merchandise, beverages, tobacco products, health and beauty care products and pharmaceutical products. These product offerings, along with best-in-class services, allow independent retailers the opportunity to support the majority of their operations with a single supplier. The Company also provides a comprehensive menu of support services designed to assist independent retailers in becoming more profitable, efficient, competitive, and informed, ranging from real estate and site surveys to a full suite of merchandising, marketing, accounting, and information technology solutions.

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The Company also **services has a diverse base of national accounts through a variety of platforms and has diversified its customer base through growth with these customers. These national accounts customers, who** partner with the Company to centralize their supply **of grocery products or across many** product categories, and to leverage the Company's broad geographic reach. Sales to one of the Company's customers in the Wholesale segment accounted for 16%, **17% 16%** and 17% of the Company's net sales for **2023, 2022 2021** and **2020, 2021**, respectively. No other individual customer exceeded 10% of the Company's net sales in any of the years presented.

The Company is also the **exclusive primary** supplier of private brand products to U.S. military commissaries, a partnership with DeCA which began in fiscal 2017. The current contract to provide DeCA with private branded products extends through December 2025. In accordance with its contract with DeCA, the Company procures the grocery and related products from various manufacturers and upon receiving customer orders from DeCA, either delivers the products to the U.S. military commissaries itself or engages its worldwide strategic business partner, CPFD, to deliver the products on its behalf. The Company is among one of the four largest distributors to the DeCA commissary system, in terms of annual

sales, that distributes products via the frequent delivery system. The remaining distributors that supply DeCA tend to be smaller regional and local providers.

DeCA operates a chain of 236 235 commissaries on U.S. military installations across the world that sells sell approximately \$4.2 billion \$4.6 billion of grocery products annually. The Company obtains distribution contracts with manufacturers through competitive bidding processes and direct negotiations. As of December 31, 2022 December 30, 2023, the Company has approximately 250 distribution contracts representing approximately 600 manufacturers that supply products to the DeCA commissary system and various exchange systems.

The Company's ten largest Wholesale customers (excluding corporate owned corporate-owned retail stores) accounted for approximately 43% 40% of total Wholesale net sales for 2022. 2023. Approximately 90% 91% of Wholesale net sales to independent retailers and national accounts for 2022 2023 are covered under supply agreements with customers. agreements.

The Wholesale segment competes directly with a number of traditional and specialty grocery wholesalers and retailers that maintain or develop self-distribution systems. In addition, the Company's independent customers face intense competition from supercenters, deep discounters, mass merchandisers, limited assortment stores, and e-commerce providers. The Company partners with these customers to help them compete efficiently and effectively. The primary competitive factors in the Wholesale business include price, service level, product quality, variety, reputation with DeCA, location of distribution centers and other value-added services.

### Retail Segment

As of December 31, 2022 December 30, 2023, the Company operated 147 corporate owned 144 corporate-owned retail stores and 36 fuel centers in nine states in the Midwest, primarily under the banners of Family Fare, Martin's Super Markets, and D&W Fresh Market and VG's Grocery. Retail banners and store counts are fully detailed in Item 2, "Properties." The Company's corporate owned retail stores range in size from approximately 14,000 to 90,000 square feet, or on average, approximately 44,000 square feet per store.

The Company's convenience and community-focused strategy distinguishes its corporate owned corporate-owned retail stores from supercenters and limited assortment stores. This strategy is complemented by e-commerce platforms, including Fast Lane and Groceries to GO, and third-party relationships with DoorDash, Shipt, Instacart Marketplaces, and Uber Eats, which provide online grocery shopping and curbside pickup or delivery at 142 corporate owned 140 corporate-owned retail locations as of December 31, 2022 December 30, 2023. These channels are highly valued by customers and continuing to enhance and grow this platform e-commerce platforms is a key component of the Company's strategy. The Company makes continues to make investments to support its online ordering systems, the speed and convenience of curbside pickup, and the efficiency and completeness of order fulfillment.

The Company's corporate owned corporate-owned retail stores offer nationally branded and the Company's private brand branded, "OwnBrands" grocery products, as well as products. These stores also offer perishable food products including dry groceries, produce, dairy, products, meat, delicatessen items, including store prepared "grab and go" meal options, fresh cut fruits and vegetables, bakery goods, frozen food, and seafood, as well as floral, products, general merchandise, beverages, health and beauty care products and fuel. Sixty-five of the Company's stores contain franchised Starbucks or Caribou Coffee shops, which enhance the customer experience and help to drive traffic. Private brand OwnBrands grocery products typically generate higher margins, while also improving customer loyalty by offering quality products at more affordable prices.

As of December 31, 2022 December 30, 2023, the Company offered pharmacy services in 91 of its corporate owned corporate-owned retail stores (81 of the pharmacies are owned by the Company) and operated three pharmacy locations not associated with corporate-owned retail locations. The Company believes the its pharmacy service offering in its corporate owned retail stores is offerings are an important part of the consumer experience. Most of the Company's pharmacies offer low-cost generic drugs and counseling for preventative health and education for its customers. Influenza and COVID-19 vaccinations are available in the pharmacies.

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The following chart details the changes in the number of corporate owned corporate-owned retail stores over the last five fiscal years:

201	201	202	202	202					
8	9	0	1	2	2019	2020	2021	2022	2023

	1	1	1	1	1					
Number of stores at beginning of year	4	3	5	5	4	139	156	156	145	147
Stores acquired or constructed during year	—	2	—	—	3	24	1	—	3	—
Stores closed or sold during year	6	7	1	1	1	7	1	11	1	3
	1	1	1	1	1					
Number of stores at end of year	9	6	6	5	7	156	156	145	147	144

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The principal competitive factors in the Retail business include the location and image of the store; the price, quality, variety and value-add of the fresh offering; and the quality, convenience and consistency of service. In addition to competing with traditional grocery stores, the Company competes with supercenters, deep discounters, mass merchandisers, limited assortment stores, and e-commerce providers. The Company monitors planned competitive store openings and uses established proactive strategies to respond to new competition both before and after competitive store openings. Strategies to react to competition vary based on many factors, such as the competitor's format, strengths, weaknesses, pricing and sales focus.

#### Supply Chain Network

The Company's distribution network is comprised of Wholesale segment comprises 19 distribution centers, in addition to a facility on the West Coast operated by CPF, which are utilized to service the Wholesale segment. CPF. The Company warehouses product through approximately 8.9 million square feet of distribution center space. The Company operates a diverse fleet of owned and leased transportation equipment, which includes 570,629 over-the-road tractors, 253,336 dry vans and 1,130,213 refrigerated trailers. In addition, the Company also operates 14 over-the-road tractors, 258,140 dry vans and 123,92 refrigerated trailers through short-term rental contracts. The Company carefully manages the approximate 64 million 65 million miles driven by its fleet and third-party carriers annually servicing military commissaries, exchanges, independent retailers, national accounts and corporate owned corporate-owned retail stores.

The Company continues to execute continued executing against its comprehensive supply chain initiatives while evolving from a state of transformation initiative to one of continuous improvement. The initiative is overall initiatives are focused on executing improvements to supply chain operations across the Company's network, which continues continue to result in sustained efficiencies and cost reductions. The supply chain initiative Company is focused on making investments in people, process, and technology to support long-term growth and maximize operational efficiencies. The Company is investing in its workforce through an expansion of its onboarding, training and career development programs, and is working on executing several initiatives aimed at improving associate engagement, customer experience and overall supply chain performance.

The Company is currently refining its sales and operations planning process and optimizing its network to enable more effective and efficient operations across the supply chain. The Company plans to continue continues to enhance its inventory management and control policies and procedures, including item assortment decisions, practices, while also developing dynamic slotting capabilities to improve order selection efficiency and maximize space utilization. Process improvements are also underway in other areas of warehouse operations, including enhanced labor planning tools and analytical capabilities to improve productivity.

System enhancements in the areas of forecasting and replenishment are intended to support the strategic optimization of inventory, allowing for improved service levels and warehouse capacities, while also reducing excess inventory and shrink. The Company believes that its consolidation of transportation management information systems will also streamline operations and reduce miles traveled.

#### Marketing and Merchandising

During 2023, the Company continued its customer-led marketing and merchandising transformation. Launched in 2022, the Company leveraged data transformation is focused on better engaging retail store shoppers and wholesale customers, using insights to develop deliver improved omnichannel marketing, promotions, pricing, and implement strategies assortment. Vendor relationships and customer partnerships were strengthened throughout the year through customer selling shows and expanded partnerships with key suppliers, and also included an enhanced showcase for the Company's OwnBrands. The Company had its largest and best-selling show in 2023 that included record attendance and sales, in addition to respond award ceremonies for new customers and vendors.

The Company continues to changes make investments in consumer behavior impacted by the post-pandemic rise its consolidated portfolio of food at home consumption as well as inflation. In 2022, the Company completed extensive market research to gain a better understanding of the meaning, importance, and equity of each retail banner brand. Shoppers revealed deep emotional connections with the Company's strong retail banner brands including to deliver an improved overall shopping experience. The Company has focused on efficiency and effectiveness to help drive sales and margin not only within its Retail stores, but also for its Wholesale customers. This includes being a strategic partner to the feeling of Company's Wholesale customers by leveraging knowledge gained from its corporate-owned Retail stores regarding best-in-class practices.

In late 2023, the Company launched a "hometown" program related to streamlining assortment and store with hundreds of local products that provide planograms. This new approach leverages customer loyalty insights and analytics to choose the best assortment and arrangement on shelf for a consistent, positive, and personalized better shopping experience.

The Company's retail growth strategy Company's OwnBrands have been a particularly important focus to meet the customer and shopper needs. The Company is focused on building in-store well positioned to meet increasing demand for premium products at a less than premium price following the launch and digital engagement with shoppers to better personalize offers continued investment in two premium and highlight local assortment, while increasing customer satisfaction through quality, service and convenience. Key focus areas include improvement in customers' perception of Company pricing, product assortment and increased penetration of the Company's private brands. Although value-seeking behavior is increasing, convenient food indulgence in grocery stores is a way in which consumers are shifting away from dining out. Building on the strength of the Company's flagship brand, Our Family®, exclusive brands: Fresh & Finest, by Our Family®, Family, and, Finest Reserve, by Our Family. In partnership with a premium fresh brand, was successfully launched in 2022. Additionally, third party, the Company launched the first phase began implementation of a merchandising transformation initially focused on enhancing category management, including a new cost policy next generation strategic pricing tool that unlocks efficiency and better promotions planning. In 2022, the transformation leveraged advanced analytics allows for more effective pricing strategies, which is anticipated to enable more customer-led category planning drive sales growth and promotions improve margin mix. New promotional insights have been implemented to benefit corporate set effective promotional prices that drive growth for both corporate-owned retail stores and independent grocery Wholesale customers.

To harmonize the omnichannel brand experience, loyalty programs and digitization efforts were furthered with personalized customer content, digital coupon capability expansion, and the launch of new retail banner brand e-commerce sites. The Company has developed processes further increased penetration of digitally active customers through improved digital promotions and pilot programs with independent customers. New chain-wide enhanced media campaigns were also rolled out to measure the activation of these strategies as well as their impacts. These measures are reviewed continuously leverage in-store and out-of-store assets to refine deliver a unified customer message around key products and evolve the strategies. The Company will continue to share its best practices across its independent customer base within the Wholesale segment as it gains further insights, promotions.

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### Seasonality

The majority of the Company's revenues are not seasonal in nature. However, in some geographies, corporate retail stores and independent retail customers are dependent on tourism, and therefore can be affected by seasons. The Company's revenues may also be impacted by weather patterns.

### **Suppliers**

The Company purchases products from a large number of national, regional and local suppliers of **name national** brand and OwnBrands merchandise. No single supplier accounts for more than 5% of the Company's purchases. The Company continues to develop strategic relationships with key suppliers and believes this will prove valuable in the development of enhanced promotional programs and consumer value perceptions.

### **Intellectual Property**

The Company owns valuable intellectual property, including trademarks, trade names, and other proprietary information, some of which are of material importance to its business.

### **Technology**

In **2022, 2023**, the Company focused on foundational IT hardware and digitization efforts across all business segments, including the continued transition to Software as a Service ("SaaS") technology, where production environments are hosted in the cloud.

**Supply Chain.** The Company continued its transformational effort to replace existing transportation systems, including standardization of processes and rationalization of disparate systems into a single integrated application stack. Additionally, the Company developed process automation improvements as well as data analytic solutions around workforce productivity. These automation and data analytic initiatives, combined with the workforce investments noted previously, are expected to contribute to improved hiring, retention and productivity.

**Retail.** The Company continued taking additional steps to modernize its retail applications footprint, which began in 2021 with a comprehensive effort to upgrade and digitize its point-of-sale ("POS") environment. The **upgraded ongoing upgrade to the POS** application includes an integrated feature set which enhances the retail experience both for **SpartanNash the Company's corporate-owned retail stores** and its independent customers.

**Marketing and Merchandising.** In 2022, the Company completed its implementation of a cloud-based pricing and promotion automation solution. The new technology provides a vendor portal and aids workflow management for promotional activities, as well as the management of associated vendor billings for all of the Company's customers. In addition, the Company further expanded eCommerce capabilities including integration with leading marketplaces including **DoorDash, Shipt, and Uber Eats.**

**Administrative Systems, Infrastructure and Security.** The Company has implemented tools to improve both the efficiency and effectiveness of internal reporting and administrative functions. A centralized cloud-based data analytics solution was implemented to consolidate the Company's analysis and reporting platforms, which supplies the Company with advanced data analytics capabilities to provide better business insights in real-time. **During 2022, the Company also took significant steps to improve its information security. Lastly, Additionally,** the Company made several enhancements to its foundational hardware infrastructure including upgrades to the production storage environment and **network servers.network.**

### **Human Capital**

The success **One of the Company's strategic direction Core Capabilities in Our Winning Recipe is People, and its execution begins with its associates, which is why the Company's Company has a keen focus on its People First culture is vitally important. For the Company, this culture. People First means investment that investing in its people Associates is the first investment it the Company makes. As the Company cultivates an environment in which associates Associates can do their best work, it is building the foundation for a thriving business high performance and sustainable business. In 2023, the Company launched the People Philosophy, which is a commitment to all of the Associates to create meaningful experiences and growth opportunities, inspiring careers for a better life. The Company also introduced eight behavioral-based competencies that will last. During 2022, the Company hired a new Chief Human Resources Officer, Nicole Zube, who has a proven background in human capital management, be used for skill-development, selection, and development.**

As of **December 31, 2022** December 30, 2023, the Company employed approximately **17,500 associates, 10,500 17,000 Associates, 10,000** on a full-time basis and 7,000 on a part-time basis. **Approximately 7% of our Associates are covered by a collective bargaining agreement representing multiple Wholesale Associates across our business.**

**Retention.** Attracting and retaining talent is imperative to achieving **the Company's mission of delivering the ingredients for a better life.Our Winning Recipe.** The Company's primary initiatives in this area include improving diversity, **equity, inclusion and inclusion belonging in our its workforce, ensuring a safe and desirable secure work environment, maintaining a competitive and compelling total rewards offer and investing in leadership and associate development.**

**While The Company's retention initiatives have resulted in a 9% decrease in the rate of turnover remains high, specifically and a 2% increase in the retail and distribution environments, 90-day new hire retention rate compared to the**

Company has specific engagement plans to further reduce attrition in 2023, prior year.

Diversity, Equity, Inclusion and Inclusion Belonging. The Company celebrates diversity and believes employing a diverse workforce where associates can be authentic Associates feel like they belong is key to success. SpartanNash expects all of its associates Associates to reinforce the People First culture to build a diverse and inclusive workplace. As a commitment to this, all associates Associates are required to complete training on Dignity dignity and Respect, Anti-Harassment respect, anti-harassment and Anti-Discrimination. Additionally, during 2022 the Company named a Senior Director of Diversity and Inclusion to oversee the Company's diversity and inclusion strategic objectives and programs.

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The Company leads with inclusion and strives to create an environment where associates Associates are valued and empowered to support its business objectives, customers and the communities it serves, and to provide associates Associates connection within the organization. SpartanNash has associate resource groups (ARGs) available for young professionals, multicultural associates, Associates, veterans, women, and women. additional groups continue to be evaluated.

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The Company also believes that it is best served by leaders that have diverse perspectives, education, experience, skills, gender, race, and ethnicity as demonstrated by the current executive leadership team and Board of Directors. The Company will continue to seek out and develop such candidates through our its talent acquisition and development practices.

Safe, Healthy Environment, Health and Secure Workplace Safety (EHS). At SpartanNash, environment, health focusing on improving the EHS of its Associates, and safety (EHS) are the communities it serves is an integral to the part of our People First culture. To keep the Company's associates safe, and achieve the mission of delivering ingredients for a better life, the The Company is focusing on improving EHS. SpartanNash is fully committed to conducting its operations safely and in an environmentally friendly manner. It does this Objectives for injury prevention, natural resource conservation, energy savings and pollution prevention are achieved by identifying, assessing, and effectively addressing environmental concerns and workplace hazards, and focusing on injury prevention, natural resource conservation, energy saving initiatives and pollution prevention. through the integration of EHS considerations, into all relevant business activities.

The Company's executive leadership team goal is fully committed to maintaining a healthy and safe workplace and integrating health and safety into all workplace activities, which is evidenced by the Company's goal to be a safety leader in every industry segment that it operates. Since 2020, the Company has reduced injury rates significantly year-over-year to reach the top quartile for OSHA safety category it measures. performance as of the year ended December 30, 2023. During this same period, lost-time incidents were reduced by 76%, which includes a 20% improvement year-over-year in 2023. More than 98% of Associates worked injury-free in 2023. Additionally, as a byproduct of the Company's effort to protect its people, workers' compensation losses were reduced by 36% since 2021.

Associate Engagement and Training. The Company believes that engagement and education are key to ensuring the Company's associates Associates provide extraordinary service and expertise. performance. The Company conducted an associate engagement survey of in 2023 to solicit feedback on its entire workforce in 2022 to comprehensively solicit feedback. human capital practices. The resulting survey action plans will be used as the basis to further associate engagement efforts in 2023, 2024. The Company provides company-wide training on Our Winning Recipe™ when new associates Associates join the Company and role-specific training to ensure operational excellence. Front-line supervisor Targeted leadership development programs are in place for high potential and high performing managers and directors. In addition, all Associates are encouraged to participate in self-paced training was an emphasis curated to develop Associates in 2022 as all front-line leaders attended the Company's Elevate manager training programs. The Company has been recognized by Business Insider as a top employer for workplace flexibility, leadership and external feedback scores show consistent positive growth in associate experience, technical skill improvement.

*Compensation and Benefits.* The Company's total rewards programs are designed to provide compensation and benefits packages that will attract, retain, reward, and inspire its associates. Associates to achieve a high level of performance. Overall compensation and benefits are periodically regularly reviewed to ensure that they remain competitive with respect to industry benchmarks. Significant wage Wage investments were are made in 2022 across the retail and supply chain operations to attract and retain associates. Areas of focus for wages included wage improvements for certain entry level roles across all front-line operations and for distribution hourly associates, provide greater incentive pay and to incentivize productivity and recognize career development. In addition, new benefits have been offered to address competitive truck driver pay. Since 2020, the Company has increased retail entry level wages by 30% on average, allow Associates tailored coverage levels. The Company's incentive strategy is to ensure its compensation is competitive in the market, equitable across levels and functions, aligned to skills and performance, and sustainable for the health of the Company.

The Compensation Committee of the Board of Directors has the full authority and responsibility to oversee and approve the Company's executive compensation philosophy and the compensation and benefits policies and programs are designed of the Company. The Committee reviews and approves disclosures related to align human capital management contained in the associates' financial interests with those Compensation Discussion and Analysis section of shareholders the Company's proxy statement, annual report, and other stakeholders, environmental, social and governance report, as applicable.

#### **Environmental Matters**

The Company may be responsible for remediation of environmental conditions and may be subject to associated liabilities relating to its stores, warehouses, and other buildings and the land on which they are situated (including responsibility and liability related to its operation of its fuel centers and truck garages and the storage of petroleum products in underground storage tanks). The Company believes that it currently conducts its operations, and in the past has conducted its operations, in substantial compliance with applicable environmental laws. Also, the Company typically conducts an environmental review prior to acquiring or leasing buildings or raw land. However, the Company cannot always control or predict what environmental conditions may be found to exist at its facilities, and future changes in regulations may result in liabilities to the Company or increases in the cost of doing business.

#### **Regulation**

The Company is subject to federal, state and local laws and regulations concerning the conduct of its business, including those pertaining to its workforce and the purchase, handling, sale and transportation of its products. Many of the Company's products are subject to federal Food and Drug Administration ("FDA") and United States Department of Agriculture ("USDA") regulation. The Company believes that it is in compliance, in all material respects, with the FDA, USDA and other federal, state and local laws and regulations governing its businesses.

#### **Available Information**

SpartanNash's web address is [www.spartannash.com](http://www.spartannash.com). The inclusion of the Company's web address in this Form 10-K does not include or incorporate by reference the information on or accessible through the Company's website, and the information contained on or accessible through those websites should not be considered as part of this Form 10-K. The Company makes its Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other reports (and amendments to those reports) filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934 available on the Company's website as soon as reasonably practicable after the Company electronically files or furnishes such materials with the SEC. Interested persons can view such materials without charge by clicking on "Investor Relations" and then "SEC Filings" on the Company's website.

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#### **Item 1A. Risk Factors**

The Company faces many risks. If any of the events or circumstances described in the following risk factors occur, the Company's financial condition or profitability may suffer, and the trading price of the Company's common stock could decline. We provide these risk factors for investors as permitted by and to obtain the rights and protections under the

Private Securities Litigation Reform Act of 1995. It is not possible to predict or identify all such factors. Consequently, investors should not consider the following to be a complete discussion of all potential risks or uncertainties applicable to our business. This discussion of risk factors should be read in conjunction with the other information in this Annual Report on Form 10-K. All of these forward-looking statements are affected by the risk factors discussed in this item and this discussion of risk factors should be read in conjunction with the discussion of forward-looking statements, which appears at the beginning of this report.

### **Business and Operational Risks**

***The Company operates in an extremely competitive industry where many of the Company's competitors are much larger and may be able to compete more effectively.***

The grocery industry is highly competitive. The Company's Wholesale and Retail segments have many competitors, including regional and national grocery distributors, large chain stores that have integrated wholesale and retail operations, mass merchandisers, e-commerce providers, deep discount retailers, limited assortment stores and wholesale membership clubs. Many of the Company's competitors have greater resources than the Company and may be able to compete more effectively. Additionally, rising headwinds including reduced consumer demand have further intensified the competitive environment.

Industry consolidation, alternative store formats, nontraditional competitors and e-commerce have contributed to market share losses for traditional grocery stores. The Company's Wholesale and Retail segments are primarily focused on traditional retail grocery trade, which faces competition from faster growing alternative retail channels, such as dollar stores, discount supermarket chains, Internet-based retailers and meal-delivery services. The Company expects these trends to continue. If the Company is not successful in effectively competing with these alternative channels, or growing sales into such channels, its business or financial results may be adversely impacted.

The Company faces competitive pressures from e-commerce activity, as consumers continue to adopt this format and do more of their shopping online. While the Company offers e-commerce services at many of its stores, some of its stores and many of its independent retailer customers do not. Other e-commerce providers may offer lower prices, superior online ordering or delivery service, or greater convenience than the Company. If the Company fails to compete successfully, it could face lower sales and may decide or be compelled to offer greater discounts to its customers, which could result in decreased profitability.

***A significant portion of the Company's sales are with major customers and the Company's success is heavily dependent on retaining this business and on our its customers' ability to maintain and grow their business.***

The Company depends heavily on our its customer base which includes certain large and growing customers, and our its success is dependent on our its customers' ability to maintain and grow their own business. During the current year, the Company has observed sales volume declines across its Wholesale distribution businesses, including to some of its major customers. To the extent that major customers decide to utilize alternative sources of products, whether through other distributors or self-distribution, or decide to discontinue offering certain products, the Company's financial condition or profitability may be materially and adversely affected. Similarly, if major customers are not able to maintain or grow their business and honor the terms of our its distribution agreements, the Company may be materially and adversely affected through a reduction in revenue and profitability.

Sales to one of the Company's customers accounted for 16%, 17% 16% and 17% of the Company's net sales in 2023, 2022 2021 and 2020, 2021, respectively. The Company's ability to maintain a close, mutually beneficial relationship with major customers is an important determinant of the Company's continued growth and profitability.

***The Company may not be able to achieve its growth strategy through successful implementation of its transformation initiatives.***

The Company's long-term strategy includes a focus on revenue growth from new customers, market share gains, and continued expansion into value-add offerings, as well as driving incremental profitability through initiatives including supply chain transformation, merchandising transformation, changes to its go-to-market strategy, and other margin-enhancing innovations, including OwnBrands execution, automation, and retail execution.

The successful design and implementation of these initiatives may present significant challenges, many of which are beyond the Company's control. In addition, the initiatives may not advance the Company's business strategy as expected. Events and circumstances, such as financial or strategic difficulties, delays, and unexpected costs may occur that could result in the Company not realizing all or any of the anticipated benefits or not realizing the anticipated benefits within the expected timetable. If the Company is unable to realize the anticipated financial performance of the initiatives, its ability to

fund other initiatives may be adversely affected. Any failure to implement the initiatives in accordance with expectations could adversely affect the Company's ability to achieve its long-term revenue and profitability targets.

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In addition, the complexity of the initiatives requires a substantial amount of management and operational resources. The Company's management team must successfully implement operational changes necessary to achieve the anticipated benefits of the initiatives.

These and related demands on its resources may divert the Company's attention from existing core businesses and could also have adverse effects on existing business relationships with suppliers and customers. As a result, the Company's financial condition, profitability, or cash flows may be adversely affected.

***The Company may not be able to achieve its strategy of growth through acquisitions, may encounter difficulties successfully integrating acquired businesses, and may not realize the anticipated benefits of business acquisitions.***

The Company's strategy includes growth through the acquisition of additional wholesale distribution and retail store operations. Given the recent consolidation activity, which has resulted in a limited number of potential acquisition targets within the food industry, the Company may not be able to identify suitable targets for acquisition or may be required to make acquisitions which do not achieve the desired level of profitability or sales. Additionally, future acquisitions of retail grocery stores could result in the Company competing with its independent retailer customers which could adversely affect existing business relationships with those customers. As a result, the Company may not be able to actively identify or pursue suitable acquisition targets in the future, complete acquisitions or obtain the necessary financing all of which may adversely affect the Company's ability to grow profitably. Furthermore, if the Company fails to successfully integrate business acquisitions and realize planned synergies, the business may not perform to expectations. The integration of acquired businesses may also cause us to incur unforeseen costs which may prevent the Company from realizing the anticipated economic, operational, and other benefits and synergies timely and efficiently, all of which may negatively impact sales and long-term growth plans.

***Disruptions to the Company's information technology systems, including security breaches and cyber-attacks, could negatively affect the Company's business.***

Vulnerabilities within the security of the Company's information technology ("IT") applications could create risk for the Company. The Company utilizes IT systems to conduct operations and also receive, transmit, and store many types of sensitive information, including consumers' personal information, personal health information, information belonging to customers, vendors, business partners, and other third parties, and the Company's proprietary, confidential, or sensitive information. Cyber threats evolve rapidly and are becoming more sophisticated, which may defeat the security programs and disaster recovery facilities and procedures implemented by the Company. As a result, the Company faces risks of security breaches, theft, espionage, inadvertent release of information, and other technology-related disruptions. Associate error, faulty password management or other problems may compromise the security measures and result in a breach of the Company's information systems, systems disruptions, data theft or other criminal activity. This could result in a loss of sales or profits or cause the Company to incur significant costs to restore its systems or to reimburse third parties for damages.

***Availability and performance of the Company's IT systems are vital to the Company's business. Failure to successfully execute IT projects and have IT systems available to the business would adversely impact the Company's operations.***

The Company has a complex IT infrastructure that is vital to its business operations. The effectiveness of these applications is relevant in supporting management's effective financial reporting and forecasting on a regular basis. Failures in the operating effectiveness of these applications could create risk for the Company. If the Company is unable to successfully modernize legacy systems in a coordinated manner across internal and external stakeholders, the Company could be subject to business interruption or reputational risk with its customers, suppliers or Associates. The failure of these systems could adversely impact the Company's business plans and potentially impair the day-to-day

business operations. In addition, the Company's IT systems may be vulnerable to damage or interruption from circumstances beyond its control, including, power outages, computer and telecommunication failures, viruses, errors by Associates, and catastrophic events such as fires, earthquakes, tornados and hurricanes. Any debilitating failure of the Company's critical IT systems, data centers and backup systems would require significant investments in resources to restore IT services and may cause serious impairment in the Company's business operations including loss of business services, increased cost of moving merchandise and failure to provide service to its customers. Failure to modernize legacy systems efficiently and effectively could result in the loss of the Company's competitive position and adversely impact its financial condition and results of operations.

***Changes in relationships with the Company's vendor base and supply chain disruptions may adversely affect its business operations.***

The Company sources the products it sells from a wide variety of vendors. The Company generally does not have long-term written contracts with its major suppliers that would require them to continue supplying merchandise. The Company depends on its vendors for appropriate allocation of merchandise, assortments of products, operation of vendor-focused shopping experiences within its stores, and funding for various forms of promotional allowances. Recent supply chain disruptions within the industry, including labor availability, raw material shortages, and rising costs have placed constraints on the Company's vendors resulting in reduced inbound fill rates and relationships with suppliers could lead to decreased product availability, changes in the Company's assortment, and decreased promotional funding, which could negatively impact sales the Company's product offering and prices offered to customers, and lead to reduced consumer demand decreasing both revenue and profitability.

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***Changes in product availability and product pricing from vendors may adversely impact the Company's business operations and profitability.***

There has been significant consolidation in the food industry, and this consolidation may continue to the Company's commercial disadvantage. Such consolidations could have a material adverse impact on the Company's revenues and profitability.

***The Company is vulnerable to decreases in the supply and increases in the price of raw materials and labor, manufacturing, distribution and other costs, and it may not be able to offset increasing costs by increasing prices to its customers.***

The Company's suppliers purchase agricultural products, including vegetables, oils and spices and seasonings, meat, poultry, packaging materials and other raw materials from growers, commodity processors, other food companies and packaging manufacturers. These products are subject to increases in price attributable to a number of factors, including changes in crop size, federal and state agricultural programs, export demand, currency exchange rates, energy and fuel costs, water supply, weather conditions during the growing and harvesting seasons, insects, plant diseases and fungi, and glass, metal and plastic prices. These increased prices, as well as other related expenses that they pass through to their customers, could result in higher costs for the products these vendors supply to the Company. Fluctuations in commodity prices can lead to retail price volatility and intensive price competition and can influence consumer buying patterns. The cost of labor, manufacturing, energy, fuel, packaging materials and other costs related to the production and distribution of the products the Company purchases from its vendors can from time to time increase significantly and unexpectedly. The Company attempts to manage these risks by entering into supply contracts, implementing cost saving measures and by raising sales prices. The Company expects to face continued industry-wide cost inflation. To the extent it is unable to offset present and future cost increases, the Company's operating results could be materially and adversely affected.

Additionally, the Company faces vendor supply chain disruptions from labor availability, raw material shortages, and rising costs. These supply chain disruptions have placed and could continue to place constraints on the Company's vendors resulting in reduced inbound fill rates and decreased product availability, which could negatively impact sales and profitability.

**Changes in macroeconomic conditions may lead to reduced consumer demand and adversely affect the Company's performance.**

Macroeconomic uncertainty, including rising inflation, potential economic recession, and increasing interest rates, among other negative macroeconomic conditions, could lead to decreased reduced disposable income for the Company's consumer spending from base, resulting in less demand for the Company's customer base, Company's products and services. Reduced consumer demand could lead to lower sales and increased product shrink which could adversely affect the Company's profitability and growth.

**It may be difficult for the Company to attract and retain well-qualified associates Associates and effectively manage increased labor costs.**

The Company has previously experienced, and may continue to experience, a shortage of qualified labor, particularly for retail store associates, Associates, warehouse workers, and truck drivers. Such a shortage has caused upward pressure on wages. If the Company is unable to attract and retain quality associates Associates to meet its needs without significant changes to its compensation offering, the Company could be required to reduce staffing below optimal levels or rely more on higher-cost third-party providers, which could significantly reduce the Company's profitability and growth.

**The Company may not successfully retain or manage transitions with executive leaders and other key personnel.**

**Customers** The Company's success depends upon the continued services of executive leaders and other key Associates, as well as its ability to whom effectively transition to their successors. The loss of such personnel may be disruptive to the Company, extends credit or for whom and if the Company guarantees loans is unable to execute an orderly transition and successfully integrate the new executives or lease obligations may fail personnel to repay the Company.

From time to time, the Company may advance funds, extend credit successfully develop and lend money to certain independent retailers and guarantee loan or lease obligations of certain customers. The Company seeks to obtain security interest and other credit support in connection with these arrangements, but the collateral may not be sufficient to cover implement strategic initiatives, the Company's exposure. Greater than expected losses from existing or future credit extensions, loans, guarantee commitments or sublease arrangements could negatively and materially impact the Company's revenue, operating results and financial condition.

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**performance may be adversely affected. Any future changes to the executive leadership team, including hires or departures, could cause further disruption to the business and have a negative impact on operating performance, while these operational areas are in transition. The Company may not be able to achieve its strategy of growth through acquisitions, may encounter difficulties successfully integrating acquired businesses, and timely find suitable successors to key roles as transitions occur or may not realize the anticipated benefits of business acquisitions.**

The Company's strategy includes growth through the acquisition of additional wholesale distribution and retail operations. Given the recent consolidation activity which has resulted in a limited number of potential acquisition targets within the food industry, the Company may not be able to identify suitable targets for acquisition or may be required to make acquisitions which do not achieve the desired level of profitability or sales. Additionally, future acquisitions of retail grocery stores could result in the Company competing with its independent retailer customers which could adversely affect existing business relationships with those customers. As a result, the Company may not be able to actively identify or pursue suitable acquisition candidates in the future, complete acquisitions or obtain the necessary financing all of which may adversely affect the Company's ability to grow profitably. Furthermore, if the Company fails to successfully integrate business acquisitions and realize planned synergies, the business may not perform to expectations. The integration of acquired businesses may also cause us to incur unforeseen costs which may prevent the Company from realizing the anticipated economic, operational, and other benefits and synergies timely and efficiently, all of which may negatively impact sales and long-term growth plans.

**The private brand program for U.S. military commissaries may be terminated successors into its leadership team or not achieve the desired results.**

In December 2016, the Defense Commissary Agency ("DeCA"), which operates U.S. military commissaries worldwide, competitively awarded to the Company the contract to support and supply products for the Agency's private brand product program. The current contract to provide DeCA with private branded products expires in December 2025. Private brand products had not previously been offered in the Agency's commissaries. The Company has invested and plans to continue to invest significant resources as it partners with DeCA to expand this program. However, the program may not

be successful, may be discontinued or DeCA may suspend, terminate, shorten the scope or change certain terms and conditions in its agreement with SpartanNash which could have a significant adverse impact on the Company's profitability.

The Company expects that DeCA will face significant competition in each product category from national brands that are familiar to consumers. If the Agency is unable to drive traffic and business at the commissaries by offering one-stop shopping for military customers through a combination of both national and private brand offerings, then both DeCA and the Company may be unable to achieve expected returns from this program, which could have a material adverse effect on the Company's business and may negatively impact DeCA's willingness operations. The Company's inability to continue the program. The success of the program will depend, retain other key leaders or effectively transition to their successors, or any delay in part, on factors beyond the Company's control, including the unilateral actions of DeCA.

**Disruptions to the Company's information technology systems, including security breaches and cyber-attacks, filling any such critical positions, could negatively affect the Company's business.**

The Company has complex information technology ("IT") systems that are vital to harm its business operations. It also employs mobile devices, social networking and other online activities to connect with and service customers, associates, suppliers, and business partners. The Company receives, transmits, and stores many types of sensitive information, including consumers' personal information, personal health information, information belonging to customers, vendors, business partners, and other third parties, and the Company's proprietary, confidential, or sensitive information. As a result, the Company faces risks of security breaches, system disruption, theft, espionage, inadvertent release of information, and other technology-related disruptions. The Company could incur significant losses due to any such event.

Cyber threats evolve rapidly and are becoming more sophisticated, which may defeat the security programs and disaster recovery facilities and procedures implemented by the Company. Cyber attackers may defeat the Company's security measures and compromise the personal information of consumers, vendors, business partners, associates and other sensitive information. Associate error, faulty password management or other problems may compromise the security measures and result in a breach of the Company's information systems, systems disruptions, data theft or other criminal activity. This could result in a loss of sales or profits or cause the Company to incur significant costs to restore its systems or to reimburse third parties for damages.

**Changes in geopolitical conditions, including the ongoing conflict between Russia and Ukraine, may adversely affect the Company's operations.**

In late February of 2022, Russia initiated a military operation in Ukraine. The Black Sea region is a key international grain and fertilizer export market and the conflict between Russia and Ukraine could continue to disrupt supply and logistics operations and impact global margins due to increased commodity, energy, and input costs, which could negatively impact the Company's profitability. To the extent the conflict between Russia and Ukraine adversely affects the Company's business, it may also have the effect of heightening other risks disclosed in this document and could further materially and adversely affect the Company's financial condition and profitability.

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**Threats to security or the occurrence of severe weather conditions, natural disasters or other unforeseen events could harm the Company's business.**

The Company's business could be severely impacted by severe weather conditions, natural disasters, or other events that could affect the warehouse and transportation infrastructure used by the Company and its vendors to supply the Company's corporate owned retail stores, and Wholesale customers. Insurance programs may not fully cover losses, contingency plans adopted by the Company may fail, and the damage or destruction of Company facilities could compromise its ability to distribute products and generate sales and could increase energy costs needed to operate impacted facilities. Unseasonable weather conditions that impact growing conditions and the availability of food could also adversely and materially affect profitability, financial position or cash flows.

**Climate change, as well as an increasing focus by stakeholders on environmental sustainability and corporate responsibility matters, could adversely affect the business, brand or reputation.**

The Company is susceptible to risks associated with climate change, which may cause more frequent and extreme weather events. Risks associated with climate change include disruptions to the operations and supply chain; increased operating costs including those associated with use of natural gas, diesel fuel, gasoline and electricity; as well as increased costs and use of operational resources associated with complying with any new climate-related legal or regulatory requirements, including mandated use of alternative energy sources such as renewable energy or reduction of

greenhouse emissions, all of which could disrupt and adversely affect the business and profitability, financial position or cash flows.

Additionally, there is increased focus by stakeholders, including governmental and nongovernmental organizations, investors and customers, on environmental sustainability and corporate responsibility matters, including climate change response, packaging and waste reduction, energy consumption, and diversity, equity and inclusion. The Company's disclosure on these matters and the failure, or perceived failure, to meet their commitments or otherwise effectively address these environmental sustainability and corporate responsibility matters, could adversely affect the business, brand or reputation. In particular, business incidents or practices, whether actual or perceived, that erode customer trust or confidence, particularly if they receive considerable publicity or result in litigation, could have a negative impact on the business.

***The Company's business and reputation may be adversely impacted by the increasing focus on environmental, social and governance matters.***

In recent years, there has been an increasing focus by various stakeholders – including investors, governmental and nongovernmental organizations, employees, and some customers, and suppliers – on environmental, social and governance (“ESG”) matters. Implementation of ESG initiatives may have an adverse financial impact on the Company resulting from increased costs required to achieve desired results. Moreover, a partial or complete failure, whether real or perceived, to adequately address ESG priorities or to achieve progress on the Company's reported ESG initiatives, could adversely affect the Company's reputation and negatively impact the Company's financial and business operations. Conversely, taking a position, whether real or perceived, on ESG, public policy, geopolitical or similar matters could also adversely impact the reputation of the Company and its financial condition stemming from increased operational and product costs, reputational damage, and shareholder activism.

The Company may not successfully achieve its ESG-related goals, and any future investments that it makes in furtherance of achieving such goals may not produce the expected results or meet increasing stakeholder ESG expectations. Moreover, future events could lead the Company to prioritize other nearer-term interests over progressing toward current ESG-related goals based on business strategy, economic, regulatory, social or other factors. If the Company is unable to meet or properly report on the progress toward achieving the ESG-related goals, it could face adverse publicity and reactions from current or potential investors, activist groups or other stakeholders, which could result in reputational harm or other adverse effects to the Company.

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***Customers to whom the Company extends credit or for whom the Company guarantees loans may fail to repay the Company.***

From time to time, the Company may advance funds, extend credit and lend money to certain independent retailers and guarantee loan obligations of certain customers. The Company seeks to obtain security interest and other credit support in connection with these arrangements, but the collateral may not be sufficient to cover the Company's exposure. Greater than expected losses from existing or future credit extensions, loans, guarantee commitments or sublease arrangements could negatively and materially impact the Company's operating results and financial condition.

***Changes in geopolitical conditions may adversely affect the Company's operations.***

Changes in geopolitical conditions, including known and/or developing conflicts, such as those in eastern Europe, the Middle East, and China, could continue to disrupt supply and logistics operations and impact global margins due to increased commodity, energy, and input costs, which could negatively impact the Company's profitability. To the extent these conflicts adversely affect the Company's business, it may also have the effect of heightening other risks disclosed in this document and could further materially and adversely affect the Company's financial condition and profitability.

***Threats due to the occurrence of severe weather conditions, natural disasters or other unforeseen events, all of which could become more frequent and extreme due to climate change, could harm the Company's business.***

The Company's business could be impacted by severe weather conditions, natural disasters, or other events, all of which could become more frequent and extreme due to climate change. These events could affect the warehouse and

transportation infrastructure used by the Company and its vendors to supply the Company's corporate owned retail stores, and Wholesale customers. Insurance programs may not fully cover losses, contingency plans adopted by the Company may fail, and the damage or destruction of Company facilities could compromise its ability to distribute products and generate sales and could increase energy costs needed to operate impacted facilities. Additionally, risks associated with climate change also include the increased use of operational resources associated with complying with any new climate-related legal or regulatory requirements, including mandated use of alternative energy sources such as renewable energy or reduction of greenhouse emissions, all of which could disrupt and adversely affect the business and profitability, financial position or cash flows. Furthermore, unseasonable weather conditions that impact growing conditions and the availability of food could lead to increased product costs to the Company or decreased inventories, which could result in reduced profitability and revenue.

***Disease outbreaks such as the COVID-19 pandemic and associated responses, may disrupt our business by increasing costs, negatively impacting our supply chain, driving change in consumer behavior, and having an adverse impact on the Company's operations.***

The Disease outbreaks, such as the COVID-19 pandemic or similar communicable diseases, and responses thereto continue to could affect our industry and our business as many risks business. Risks and uncertainties remain and some of the measures put in place in response related to the pandemic continue disease outbreaks, such as duration, concerns related to have material adverse impacts on business operations, including:

- Duration of the COVID-19 pandemic, increase in the number of COVID-19 cases, and the related effect of new variants, strains or mutations of the virus on economic activity and business operations;
- Ongoing concerns about the health and safety of our associates, Associates and our ability related labor impacts, costs associated with changes in demand, adverse supply chain impacts and impacts to meet staffing needs in our retail stores, distribution centers, and corporate offices;
- Increased distribution and operational costs due to significant increases in customer traffic and demand for grocery products, and the corresponding inability to meet demand with the existing workforce or other assets;
- Failure of third parties on in which the Company relies, including its customers, suppliers, contractors, commercial banks increased labor costs, and other business partners to meet their obligations to the Company, which may be caused by their own financial increased or operational challenges, which could materially and adversely impact the Company;
- Supply chain risks due to significantly increased demand following supply chain shutdowns and unprecedented disruptions and delays, including the availability of warehouse and transportation personnel and service providers or the inability to procure adequate quantities of certain goods;
- Reduced workforce or temporary store and distribution center closures associated with the presence of COVID-19 infections among the Company's associates;
- Increased costs relating to compliance with public health and safety requirements for the Company's associates and customers;
- Inability to accurately forecast financial results due to the uncertainty associated with the short- and long-term effects of the pandemic on the U.S. economy, our business, and consumer behavior; or
- Increased and accelerated competition, from alternative channels, including e-commerce retailers, due to a change in consumer behavior post-pandemic and continued social distancing.

Any of the foregoing factors, or other effects, of the pandemic may materially increase costs, negatively impact sales and damage the Company's financial condition, profitability, cash flows and its liquidity position. The significance and duration of any such impacts are not possible to predict due to the overall uncertainty associated with COVID-19 and any future pandemic.

***The private brand program for U.S. military commissaries may be terminated or not achieve the desired results.***

In December 2016, the Defense Commissary Agency ("DeCA"), which operates U.S. military commissaries worldwide, competitively awarded to the Company the contract to support and supply products for the Agency's private brand product program. The current contract to provide DeCA with private branded products expires in December 2025. Private brand products had not previously been offered in the Agency's commissaries. The Company has invested and plans to continue to invest significant resources as it partners with DeCA to expand this program. However, the program may not be successful, may be discontinued or DeCA may suspend, terminate, shorten the scope or change certain terms and conditions in its agreement with SpartanNash which could have a significant adverse impact on the Company's profitability.

The Company expects that DeCA will face significant competition in each product category from national brands that are familiar to consumers. If the Agency is unable to drive traffic and business at the commissaries by offering one-stop shopping for military customers through a combination of both national and private brand offerings, then both DeCA and the Company may be unable to achieve expected returns from this program, which could have a material adverse effect on the Company's business and may negatively impact DeCA's willingness to continue the program. The success of the program will depend, in part, on factors beyond the Company's control, including the unilateral actions of DeCA.

**Impairment charges for goodwill or other long-lived assets could adversely affect the Company's financial condition and profitability.**

The Company is required to perform an annual impairment test for goodwill and other long-lived tangible and intangible assets in the fourth quarter of each year, or more frequently if indicators are present or changes in circumstances suggest that impairment may exist. Testing goodwill and other assets for impairment requires management to make significant estimates about the Company's future performance, cash flows, and other assumptions that can be affected by potential changes in economic, industry or market conditions, business operations, competition, or – for goodwill – the Company's stock price and market capitalization. Changes in these factors, or changes in actual performance compared with estimates of the Company's future performance, may affect the fair value of goodwill or other assets. This could result in the Company recording a non-cash impairment charge for goodwill or other long-lived assets in the period the determination of impairment is made. The Company cannot accurately predict the amount or timing of potential impairments of assets. Should the value of goodwill or other assets become impaired, the Company's financial position and profitability may be adversely affected.

**The Company may not successfully manage transitions associated with Risks Related to the executive leadership team. Company's Indebtedness**

The Company's success depends upon the continued services level of executive officers indebtedness could adversely affect its financial condition and other key personnel, as well as its ability to effectively transition raise additional capital or obtain financing in the future, respond to their successors. Within the past two years, business opportunities, react to changes in its business, and make required payments on its debt.

As of December 30, 2023, the Company has appointed several new executive leaders. These transitions may be disruptive had outstanding indebtedness of \$597.5 million (net of unamortized debt issuance costs), primarily related to its asset-based lending facility (the "Revolving Credit Facility"). Refer to Note 6 in the accompanying notes to the Company, and if consolidated financial statements for further information. If the Company is unable not able to execute an orderly transition and successfully integrate the new executives generate cash flow from operations sufficient to successfully develop and implement strategic initiatives, the Company's revenue, operating results and financial performance service its debt, it may be adversely affected. Any future changes need to the executive leadership team, including hires refinance its debt, dispose of assets or departures, could cause further disruption issue equity to the business and have a negative impact on operating performance, while these operational areas are in transition. obtain necessary funds. The Company may not be able to take any of such actions on a timely find suitable successors basis, on satisfactory terms or at all.

Indebtedness could have significant consequences, including the following:

- reduced ability to key roles as transitions occur or may not successfully integrate successors into its leadership team or execute the Company's business operations. growth strategy, including merger and acquisition opportunities;
- reduced ability to invest in the Company, which may place it at a competitive disadvantage;
- increased vulnerability to adverse economic and industry conditions;
- exposure to interest rate increases;
- reduced cash flow available for other purposes; or
- limited ability to borrow additional funds for working capital, capital expenditures and other investments.

The Company's inability level of indebtedness may further increase from time to retain other key leaders or effectively transition to their successors, or any delay in filling any such critical positions, could harm its business and profitability.

**Risks Related to time. Although the Company's Indebtedness agreements governing indebtedness contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions and, under certain circumstances, the amount of indebtedness, including secured debt, that could be incurred in compliance with these restrictions could be substantial. Incurring substantial additional indebtedness could further exacerbate the risks associated with the Company's level of indebtedness.**

**The Company is exposed to interest rate risk due to the variable rates on its indebtedness, which may increase debt service obligations if interest rates rise.**

The Company's borrowings under the Revolving Credit Facility bear interest at variable rates and expose it to interest rate risk. The Company may not be able to accurately predict changes in interest rates or mitigate their impact. If interest rates increase, debt service obligations on the variable rate indebtedness would increase even though the amount borrowed remains the same and the Company's profitability would decrease. **A Before consideration of hedging instruments, a hypothetical 0.50% increase in rates applicable to borrowings under the Revolving Credit Facility as of December 31, 2022 December 30, 2023 would increase interest expense related to such debt by approximately \$2.2 million \$2.6 million per year.**

**Covenants in its debt agreements restrict the Company's operational flexibility.**

The agreements governing the Revolving Credit Facility contain usual and customary restrictive covenants relating to the management and operation of the Company, including restrictions on its ability to borrow, pay dividends, or consummate certain transactions. These covenants may prevent the Company from taking actions that it believes would be in the best interest of the business and may make it difficult for the Company to successfully execute its business strategy and transformation initiatives or effectively compete with companies that are not similarly restricted. The Company may also incur future debt obligations that might subject it to additional restrictive and financial covenants that could affect financial and operational flexibility. The Company may not be granted waivers of or amendments to these agreements if for any reason it is unable to comply with them, or the Company may not be able to refinance its debt on acceptable terms or at all. In addition, failure to comply with the covenants in the Company's debt agreements could result in all of its indebtedness becoming immediately due and payable.

**The Company's level of indebtedness could adversely affect its financial condition and its ability to raise additional capital or obtain financing in the future, respond to business opportunities, react to changes in its business, and make required payments on its debt.** -13-

**As of December 31, 2022, the Company had outstanding indebtedness of \$503.6 million (net of unamortized debt issuance costs), primarily related to its asset-based lending facility (the "Revolving Credit Facility"). Refer to Note 6 in the accompanying notes to the consolidated financial statements for further information. If the Company is not able to generate cash flow from operations sufficient to service its debt, it may need to refinance its debt, dispose of assets or issue equity to obtain necessary funds. The Company may not be able to take any of such actions on a timely basis, on satisfactory terms or at all.**

**Indebtedness could have significant consequences, including the following:**

- **reduced ability to execute the Company's growth strategy, including merger and acquisition opportunities;**
- **reduced ability to invest in the Company, which may place it at a competitive disadvantage;**
- **increased vulnerability to adverse economic and industry conditions;**
- **exposure to interest rate increases;**
- **reduced cash flow available for other purposes; or**
- **limited ability to borrow additional funds for working capital, capital expenditures and other investments.**

**The Company's level of indebtedness may further increase from time to time. Although the Company's agreements governing indebtedness contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions and, under certain circumstances, the amount of indebtedness, including secured debt, that could be incurred in compliance with these restrictions could be substantial. Incurring substantial additional indebtedness could further exacerbate the risks associated with the Company's level of indebtedness.**

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## **Legal, Regulatory and Legislative Risks**

**Changes in government regulations may have a material adverse effect on financial results.**

The Company operates in a highly regulated environment. The products we distribute and sell through our retail stores are subject to inspection and regulatory action by the United States Food and Drug Administration. Our warehouses and distribution centers are subject to inspection by the United States Department of Agriculture, the United States Department of Labor Occupational and Health Administration, and various state health and workplace safety authorities, and our logistics operations are subject to regulation by the United States Department of Transportation and the United States Federal Highway Administration. The Company is also subject to the international regulations of the European Union's Import Control System for export shipments that are ultimately made to non-domestic commissaries. Moreover, as a federal contractor, the Company must develop and maintain Affirmative Action Programs under the Rehabilitation Act, as enforced by the Office of Federal Contract and Compliance Programs, which may cause the Company to incur significant reputational and monetary damages for alleged discrimination in employment practices. In addition, there are various other international, U.S. federal, state and local laws, regulations and administrative practices to which the Company is subject, which require us to comply with numerous provisions regulating areas such as environmental, health and sanitation standards, food safety, marketing of natural or organically produced food, facilities, pharmacies, equal employment opportunity, public accessibility, employee benefits, wages and hours worked and licensing for the sale of food, drugs, tobacco and alcoholic beverages, among others. Changes in federal, state or local minimum wages and overtime laws, federal tax laws, or employee paid leave laws could result in the Company incurring significant labor costs which could have material adverse effects on the Company's financial position and profitability. The Company employs hourly associates who are compensated at an hourly rate lower than \$15.00. If minimum wage rates increase, the Company would have to increase the wages of employees who fall below the new minimum and may need to increase the wages of employees in close proximity above the new minimum to address wage compression. In addition, changes in federal tax regulations may result in significant increases in the Company's current and deferred tax liabilities, and may include changes in federal tax rates and the deductibility of certain costs. Failure to comply with existing or new laws or regulations could result in significant damages, penalties and/or litigation costs for the Company.

**A number of the Company's Associates are covered by collective bargaining agreements, and unions may attempt to organize additional Associates.**

Approximately 7% of the Company's Associates are covered by collective bargaining agreements ("CBAs") which expire between January 2025 and February 2027. The Company expects that rising healthcare, pension and other employee benefit costs, among other issues, will continue to be important topics of negotiation with the labor unions. Upon the expiration of the Company's CBAs, work stoppages by the affected workers could occur if the Company is unable to negotiate an acceptable contract with the labor unions. This could significantly disrupt the Company's operations.

Further, if the Company is unable to control healthcare and pension costs provided for in the CBAs, the Company may experience increased operating costs and an adverse impact on future profitability.

The Company may continue to see additional union organizing campaigns. The potential for unionization could increase as any new related legislation or regulations are passed. The Company respects its Associates' right to unionize or not to unionize. However, the unionization of a significant portion of the Company's workforce could increase the Company's overall costs at the affected locations and adversely affect its flexibility to run its business in the most efficient manner to remain competitive or acquire new businesses and could adversely affect its profitability by increasing its labor costs or otherwise restricting its ability to maximize the efficiency of its operations.

**The Company's Wholesale segment is dependent upon domestic and international military operations. A change in the military commissary system, including its supply chain, or a change in the level of governmental funding, could negatively impact the Company's business.**

Because the Company's Wholesale segment sells and distributes grocery products to military commissaries and exchanges in the United States and overseas, any material changes in the commissary system, the level of governmental funding to DeCA, military staffing levels, or locations of bases, or DeCA's supply chain may have a corresponding impact on the sales and operating performance of this segment. These changes could include privatization of some or all of the military commissary system, relocation or consolidation of commissaries and exchanges, base closings, troop redeployments or consolidations in the geographic areas containing commissaries and exchanges served by the Company, a change by DeCA to a self-distribution model, or a reduction in the number of persons having access to the commissaries and exchanges. Mandated reductions in the government expenditures, including those imposed as a result of a sequestration, may impact the level of funding to DeCA and could have a material impact on the Company's operations. If DeCA were to make material changes to its supply chain model, for example by limiting distribution authorization, then the Company's Wholesale segment could be affected.

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**Product recalls or other safety concerns regarding the Company's products could harm the Company's reputation as well as increase its costs.**

The Company faces risks related to the safety of the food products that it distributes or sells. It may need to recall such products for actual or alleged contamination, adulteration, mislabeling, or other safety concerns. The Company distributes fresh fruits and vegetables, as well as other fresh prepared foods. These products, and other food products that the Company sells, are at risk of contamination by disease-causing organisms such as *Salmonella*, *E. coli*, and others. These pathogens are generally found in nature, and as a result, there is a risk that they could be present in the products distributed or sold by the Company. The Company typically has little control over proper food handling before the Company's receipt of the product or once the product has been delivered to the Company's retail customers. Recall costs can be material. A widespread product recall could result in significant losses due to the administrative costs of a recall, the destruction of inventory, and lost sales. Recalls and other food safety concerns can also result in adverse publicity, damage to the Company's reputation, and a loss of confidence in the safety and quality of its products. Customers may avoid purchasing certain products from the Company, or may seek alternative sources of supply for some or all of their food needs, even if the basis for concern is outside of the Company's control. Any loss of confidence on the part of the

Company's customers would be difficult and costly to overcome. Any real or perceived issue regarding the safety of any food or drug items sold by the Company, regardless of the cause, could have a substantial and adverse effect on the Company's business.

**A number of the Company's associates are covered by collective bargaining agreements, and unions may attempt to organize additional associates.**

Approximately 7% of the Company's associates are covered by collective bargaining agreements ("CBAs") which expire between February 2024 and April 2026. The Company expects that rising healthcare, pension and other employee benefit costs, among other issues, will continue to be important topics of negotiation with the labor unions. Upon the expiration of the Company's CBAs, work stoppages by the affected workers could occur if the Company is unable to negotiate an acceptable contract with the labor unions. This could significantly disrupt the Company's operations.

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Further, if the Company is unable to control healthcare and pension costs provided for in the CBAs, the Company may experience increased operating costs and an adverse impact on future profitability.

The Company may continue to see additional union organizing campaigns. The potential for unionization could increase as any new related legislation or regulations are passed. The Company respects its associates' right to unionize or not to unionize. However, the unionization of a significant portion of the Company's workforce could increase the Company's overall costs at the affected locations and adversely affect its flexibility to run its business in the most efficient manner to remain competitive or acquire new businesses and could adversely affect its profitability by increasing its labor costs or otherwise restricting its ability to maximize the efficiency of its operations.

**Costs related to multi-employer pension plans and other postretirement plans could increase.**

The Company contributes to the Central States Southeast and Southwest Pension Fund (the "Central States Plan" or the "Plan"), a multi-employer pension plan, based on obligations arising from its CBAs with Teamsters locals 406 and 908. SpartanNash does not administer or control this Plan, and the Company does not have control over the level of contributions the Company is required to make. Benefit levels and related issues may continue to create collective bargaining challenges. The amount of any increase or decrease in its required contributions to this Plan will depend upon the outcome of collective bargaining, the actions taken by the trustees who manage the Plan, governmental regulations, actual return on investment of Plan assets, the continued viability and contributions of other contributing employers, and the potential payment of withdrawal liability should the Company choose to exit a geographic area, among other factors. Costs related to multi-employer pension plans and other postretirement plans could increase and adversely affect the Company's financial conditions and results of operation.

Refer to Note 9 in the accompanying notes to the consolidated financial statements for further information.

#### **Item 1B. Unresolved Staff Comments**

None.

#### **Item 1C. Cybersecurity**

##### **Management's Role**

The Information Security function is led by the Chief Information Security Officer (CISO), under the direction of the Chief Information Officer (CIO). The Company's CISO, who was appointed in August 2021, has over 20 years of experience within information security and is both a Certified Information Security Manager and a Certified Information Systems Auditor. Key responsibilities of the Information Security function include developing cybersecurity strategies; managing cybersecurity governance; performing cybersecurity risk assessments; ensuring compliance with security standards and regulatory requirements; managing identity and access; monitoring cybersecurity threats; validating cybersecurity alerts; preparing for and responding to cybersecurity incidents; business continuity and disaster recovery plans; and creating security awareness through periodic trainings of both Company leadership and Associates. The CIO, CISO and the Company's Chief Legal Officer, who also serves as the Chief Compliance Officer, have oversight responsibilities of the Company's cybersecurity program.

##### **Board Oversight**

The Company's Board of Directors (Board) has appointed the Audit Committee to assist the Board in fulfilling its responsibilities with respect to the oversight of cybersecurity, data security, privacy programs, and the Company's response to security breaches. Two Company Directors serving on the Audit Committee completed the National Association of Corporate Directors/Carnegie Mellon CERT cyber-risk oversight program along with required examinations and earned the CERT designation. The CISO provides quarterly updates to the Audit Committee, which include a current evaluation of the Company's maturity within the National Institute of Standards and Technology (NIST) framework, including assessments against key performance indicators, updates on internal phishing campaigns, tabletop exercises conducted at various levels of the organization, and management training. The Audit Committee also reviews reports and recommendations from third parties periodically engaged by the Company to assess the cybersecurity control environment. In addition, the Company's internal audit function periodically audits elements of the security program and reports its observations to the CISO and the Audit Committee.

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## Risk Management and Strategy

As a component of the Company's overall risk management process, which is aligned with a broader Enterprise Risk Management framework, the Company has implemented a multi-layered approach to minimize cybersecurity risk and safeguard its data. The Company conducts cybersecurity risk assessments on a regular basis and responds to identified risk exposures by employing a combination of risk mitigation strategies, including the adoption of cybersecurity controls and maintaining a cybersecurity insurance policy that provides coverage for security breaches. The Company engages third party consultants periodically to evaluate elements of the cybersecurity policy, processes, procedures and controls. The CISO and other members of the Executive Leadership Team respond to applicable recommendations arising from the third-party consultants. In addition, the Company engages a Qualified Security Assessor as part of the compliance requirements for Payment Card Industry (PCI). The Company also engages with a third-party risk management provider to ensure its vendors comply with internal security and privacy requirements and that key vendors are continually monitored for security risks. The Company's cybersecurity governance practices are based on the Company's common control framework which incorporates elements from the NIST Cybersecurity Framework, the Center for Internet Security's benchmark standards, and specific regulatory and industry requirements including Health Insurance Portability and Accountability Act and PCI. The CISO provides at least quarterly updates on the cybersecurity program, including the results of the cybersecurity risk assessments and the related responses, to the Company's Security Governance Council composed of members of the Executive Leadership Team. The Company continually monitors cybersecurity threats and has a dedicated cybersecurity team in place to identify if any of the threats may lead to a cybersecurity incident. In the event of such an incident, the Company will take decisive measures to thoroughly analyze, contain, and eliminate the threat. Following an incident, a comprehensive review is performed to determine whether the incident meets qualitative or quantitative materiality thresholds, and whether the incident warrants public disclosure.

## Effect of Cybersecurity Threats

As of the effective date of this filing, the Company is currently not aware of any known or potential cybersecurity threats that are reasonably likely to materially affect the Company's business strategy, results of operations, or financial conditions. Although the Company believes it has implemented sufficient security measures to protect against cyber-attacks, unknown cyber incidents could materially disrupt the Company's operations or compromise sensitive information.

## Item 2. Properties

The following table lists the locations and approximate square footage of the Company's distribution centers used by its the Company's Wholesale segment as of December 31, 2022 and December 30, 2023. The lease expiration dates for the distribution centers primarily servicing the Wholesale segment range from October 2023 February 2025 to December 2031. The majority of these leases contain renewal options beyond these dates, if exercised.

Distribution Centers	Distribution Centers			Distribution Centers		
	Square Footage			Square Footage		
Location	Leased	Owned	Total	Leased	Owned	Total
Grand Rapids, Michigan	—	1,179,582	1,179,582	—	1,179,582	1,179,582
Norfolk, Virginia	188,093	545,073	733,166	188,093	545,073	733,166
Omaha, Nebraska	4,384	686,783	691,167	4,384	686,783	691,167
Bellefontaine, Ohio	—	666,045	666,045	—	666,045	666,045
Oklahoma City, Oklahoma	—	608,543	608,543	—	608,543	608,543
Lima, Ohio	—	517,552	517,552	—	517,552	517,552
Columbus, Georgia (a)	478,702	—	478,702	478,702	—	478,702
Bloomington, Indiana	—	471,277	471,277	—	471,277	471,277
San Antonio, Texas	—	461,544	461,544	—	461,544	461,544
Fargo, North Dakota	—	—	—	158,135	288,824	446,959
Lumberton, North Carolina	386,129	—	386,129	386,129	—	386,129
Fargo, North Dakota	81,000	288,824	369,824	—	—	—
St. Cloud, Minnesota	40,319	329,046	369,365	—	—	—
Landover, Maryland	368,088	—	368,088	368,088	—	368,088
Severn, Maryland	363,872	—	363,872	363,872	—	363,872
Pensacola, Florida	—	355,900	355,900	—	355,900	355,900
St. Cloud, Minnesota	—	—	—	—	329,046	329,046
Sioux Falls, South Dakota	79,300	196,114	275,414	79,300	196,114	275,414
Menominee, Michigan	—	253,021	253,021	—	253,021	253,021
Bluefield, Virginia	—	187,531	187,531	—	187,531	187,531
Indianapolis, Indiana	—	118,497	118,497	—	118,497	118,497
Total Square Footage	1,989,887	6,865,332	8,855,219	2,026,703	6,865,332	8,892,035

- (a) The Columbus location requires periodic lease payments to the holder of the outstanding industrial revenue bond, which is held by the Company. Upon expiration of the lease the Company will take title to the property upon redemption of the bond.

The following table lists the Company's retail stores, including the adjacent fuel centers of the related stores, by retail banner, number of stores, location and approximate square footage under each banner as of **December 31, 2022** and **December 30, 2023**.

Retail Segment	Retail Segment						Retail Segment						
	Leased		Owned		Total		Leased		Owned		Total		
Location	Number	Square	Number	Square	Number	Square	Number	Square	Number	Square	Number	Square	
	of Stores	of Square Feet	of Stores	of Square Feet	of Stores	of Square Feet	of Stores	of Square Feet	of Stores	of Square Feet	of Stores	of Square Feet	
Family Fare	Michigan, Minnesota, Nebraska, North Dakota, South Dakota, Iowa, Wisconsin	3, 2, 4, 1, 8, 7	2, 11, 3, 6, 5	3, 5, 2, 6, 4, 2, 8, 9	3, 7, 6, 8, 9	5	Michigan, Minnesota, Nebraska, North Dakota, South Dakota, Iowa, Wisconsin	82	3,548,492	13	512,961	95	4,061,453
Martin's Super Markets	Indiana, Michigan	6, 6, 0, 2, 2, 11	8, 9, 7, 2, 0, 8	4, 6, 1, 7, 2, 9	1, 2, 1, 9, 5, 5	5	Indiana, Michigan	11	660,228	9	461,727	20	1,121,955
D&W Fresh Market	Michigan	3, 9, 8, 8, 6, 3, 6	8, 2, 4, 5, 8, 3, 3	4, 1, 8, 4, 4, 0, 9, 1, 1, 7, 2, 6	8, 8, 4, 0, 1, 1, 2, 9, 2, 6	4	Michigan	8	393,586	2	84,458	10	478,044
VG's Grocery	Michigan	8, 1, 1, 7, 2	1, 0, 1, 2	9, 1, 2, 9, 2	1, 1, 2, 9, 2	1	Michigan	8	363,117	1	38,012	9	401,129
Dan's Supermarket	North Dakota	5, 7, 7	—, —	5, 7, 7	4, 0, 7, 7	4							



### Item 3. Legal Proceedings

From time-to-time, the Company is engaged in routine legal proceedings incidental to its business. The Company does not believe that these routine legal proceedings, taken as a whole, will have a material impact on its business or financial condition. Additionally, various lawsuits and claims, arising in the ordinary course of business, are pending or have been asserted against the Company. While the ultimate effect of such actions, lawsuits and claims cannot be predicted with certainty, management believes that their outcome will not result in a material adverse effect on the Company's consolidated financial position, operating results or liquidity. Legal proceedings, various lawsuits, claims, and other matters are more fully described in Note 8, 9, in the notes to consolidated financial statements, which is herein incorporated by reference.

### Item 4. Mine Safety Disclosures

Not Applicable.

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## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

SpartanNash common stock is traded on the Nasdaq Global Select Market under the trading symbol "SPTN."

As of February 27, 2023 February 26, 2024, there were approximately 1,300 1,200 shareholders of record of SpartanNash common stock.

During the fourth quarter of 2017, the Board authorized a \$50.0 million share repurchase program, which expired during the fourth quarter of 2022. On February 24, 2022, the Board of Directors authorized the repurchase of common shares in connection with a new \$50 million program, which expires on February 22, 2027. As of December 31, 2022 December 30, 2023, \$44.0 million \$25.4 million remains available for share repurchases under the new program. The Company plans to return value to shareholders through share repurchases under this program as well as continuing regular dividends dividends.

In 2023, 2022, 2021, and 2020 2021 the Company repurchased 765,194, 1,046,538, 265,000, and 860,752 265,000 shares of common stock for approximately \$32.5 million \$18.6 million, \$5.3 million \$32.5 million and \$10.0 million \$5.3 million, respectively.

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Repurchases of common stock may include: (1) shares of SpartanNash common stock delivered in satisfaction of the exercise price and/or tax withholding obligations by holders of employee stock options who exercised options, and (2) includes shares submitted for cancellation to satisfy tax withholding obligations that occur upon the vesting of the restricted shares. The value of the shares delivered or withheld is determined by the applicable stock compensation plan. The following table provides information regarding SpartanNash's purchases of its own common stock during the 12-week period ended December 31, 2022 December 30, 2023.

Fiscal Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs	Maximum Dollar Value of Shares Yet to be Purchased Under the Plans or Programs (in thousands)	
October 8 - November 4, 2023					
Employee Transactions	—	\$ —	N/A		N/A
Repurchase Program	—	\$ —	—	\$	25,399
November 5 - December 2, 2023					
Employee Transactions	118	\$ 21.50	N/A		N/A
Repurchase Program	—	\$ —	—	\$	25,399
December 3 - December 30, 2023					
Employee Transactions	—	\$ —	N/A		N/A
Repurchase Program	—	\$ —	—	\$	25,399
Total for quarter ended December 30, 2023					
Employee Transactions	118	\$ 21.50	N/A		N/A
Repurchase Program	—	\$ —	—	\$	25,399
Fiscal Period		Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as	Maximum Dollar Value of Shares Yet to be Purchased Under the

			Part of Publicly Announced Programs	Plans or Programs (in thousands)
October 9 - November 5, 2022				
Employee Transactions	—	\$ —	N/A	N/A
Repurchase Program (a)	84,925	\$ 31.65	84,925	\$ 53,704
November 6 - December 3, 2022				
Employee Transactions	118	\$ 31.99	N/A	N/A
Repurchase Program	90,585	\$ 32.50	90,585	\$ 47,568
December 4 - December 31, 2022				
Employee Transactions	—	\$ —	N/A	N/A
Repurchase Program	113,100	\$ 31.60	113,100	\$ 43,994
Total for quarter ended December 31, 2022				
Employee Transactions	118	\$ 31.99	N/A	N/A
Repurchase Program	288,610	\$ 31.90	288,610	\$ 43,994

(a) The dollar value of shares yet to be purchased under the repurchase programs includes \$3.7 million under the 2017 program that expired on November 15, 2022.

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### Performance Graph

Set forth below is a graph comparing the cumulative total shareholder return on SpartanNash common stock to that of the S&P SmallCap 600 Food Distributors Index and the S&P SmallCap 600 Index, over a period beginning **December 30, 2017** **December 29, 2018** and ending on **December 31, 2022** **December 30, 2023**.

Cumulative total return is measured by the sum of (1) the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and (2) the difference between the share price at the end and the beginning of the measurement period, divided by the share price at the beginning of the measurement period.



The dollar values for total shareholder return plotted above are shown in the table below:

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	Decem ber 30, 2017	Decem ber 29, 2018	Decem ber 28, 2019	Janua ry 2, 2021	Janua ry 1, 2022	Decem ber 31, 2022	December 29, 2018	December 28, 2019	January 2, 2021	January 1, 2022	December 31, 2022	December 30, 2023
SpartanNash	10 \$ 0.0	75 \$ 65.	11 \$ 58.	13 \$ .1	13 \$ 5.	13 \$ 9.2	\$	\$	\$	\$	\$	\$
S&P SmallCap 600	10 0.0	11 91.	12 2.0	15 5.	13 8.	13 3.0	100.00	88.50	114.57	175.92	212.19	167.22
S&P SmallCap 600 Food Distributors	10 0.0	88 64.	81 61.	2 .9	22 3.	5 2.4	100.00	95.27	106.22	205.33	188.73	156.41

The information set forth under the Heading "Performance Graph" shall not be deemed to be "soliciting material" or to be "filed" with the Commission or subject to Regulation 14A or 14C, or to the liabilities of Section 18 of the Exchange Act, except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act.

### Item 6. Reserved

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

### About SpartanNash

SpartanNash, headquartered in Grand Rapids, Michigan, is a food solutions company that delivers the ingredients for a better life. As a distributor, wholesaler and retailer with a global supply chain network, SpartanNash customers span a diverse group of national accounts, independent and chain grocers, retailers, e-commerce retailers, U.S. military commissaries and exchanges, and the Company's own brick-and-mortar grocery its corporate-owned retail stores, pharmacies and fuel centers. SpartanNash distributes grocery and household goods, including fresh produce and its *Our Family® portfolio of products*, *Family private label brand*, to locations in all 50 states.

At the beginning of the third quarter of 2022, the Company combined the previous Food Distribution and Military operating segments into one operating segment: Wholesale. The change in the operating segments was driven by both a change in the Company's organizational structure, and in the reporting utilized by the Chief Operating Decision Maker to allocate the Company's resources and assess operating performance. The combination of the two segments reflects the way the Company manages the distribution business as one comprehensive distribution network and furthers the Company's efforts to streamline operations in connection with its supply chain transformation and to better serve customers. As a result, the Company now operates Company's two reportable segments; segments, Wholesale and Retail. These reportable segments Retail, are two distinct businesses, each with a different customer base, management structure, and basis for determining budgets, forecasts, and compensation. Segment Where applicable, segment financial information for the comparative prior year periods within this report has been recast to reflect this update, the Company's current reportable segment structure.

### Overview of 2022 2023

In a dynamic operating challenging macroeconomic environment, the Company has continued to execute on *Our Winning Recipe™*, which drove solid continued to support strong financial results in fiscal 2022 results. 2023. The plan continues to generate sustainable growth, improvements in profitability as the Company further optimizes its supply chain network, improves value for its customers through stronger vendor relationships, and captures additional cost savings, benefits, while providing exceptional customer service and additional offerings. Through the supply chain transformation initiative, the Company secured \$25 million in run-rate cost savings and anticipates that the merchandising transformation initiative will begin generating significant benefits for customers, vendors, and the Company in 2023 and beyond. The Company's 2022 2023 highlights include:

#### Wholesale

- Wholesale segment net sales increased \$495.5 million \$74.0 million compared to the prior year due primarily to the inflationary impact on pricing, pricing, partially offset by low unit volumes.
- The Wholesale segment realized gross margin rate improvement operating earnings of 20 basis points. The change \$87.7 million increased \$32.6 million compared to \$55.1 million in gross profit was driven primarily by the impact prior year. Adjusted EBITDA of inflation, partially offset by incremental last-in-first-out ("LIFO") expense.
- The Company continued \$177.9 million increased \$12.0 million compared to execute on its comprehensive supply chain transformation initiative. The initiative is focused on executing improvements to supply chain operations across \$165.9 million in the Company's network, which has secured more than \$25 million in run-rate cost savings and delivered an approximate 7% improvement in throughput rate year-over-year. prior year.

#### Retail

- Retail comparable store sales increased 9.1% for 2.0% compared to the fourth quarter and prior year due primarily to the inflationary impact on pricing, partially offset by lower volumes.
- Retail segment operating earnings of \$19.0 million increased 7.7% for \$5.6 million compared to \$13.4 million in the fiscal prior year. Adjusted EBITDA of \$79.5 million increase \$2.5 million compared to \$77.0 million in the prior year.

#### Other Highlights

- The Company launched the first phase of a supply chain and merchandising transformation initiative that is anticipated to generate initiatives drove approximately \$26 million and \$29 million in benefits in 2023, respectively. Since launching the transformation work, the Company has improved its throughput<sup>(1)</sup> rate by double digits, passed along significant benefits for to its customers through the Company, customers, Enhanced Category Planning program, and vendors. The initiative involves enhanced category management planning, including a new cost policy, captured \$80 million in total gross benefits since 2022. These benefits helped to offset broader industry headwinds which impacted volume and better promotions planning. profitability throughout the year.
- During 2022, 2023, the Company paid returned \$48.2 million to shareholders through \$29.7 million in cash dividends, or \$0.84 \$0.86 per common share, to shareholders and returned an additional value to shareholders \$18.6 million in the form of share repurchases of \$32.5 million. repurchases. In addition, the Company generated net cash from operating activities of \$110.4 million \$89.3 million in 2022, 2023.
- The Company reported earnings from continuing operations for the fiscal year of \$34.5 million \$52.2 million, compared to \$73.8 million \$34.5 million in the prior year. The Com reported adjusted EBITDA for the fiscal year of \$242.9 million \$257.4 million, compared to \$213.7 million \$242.9 million in the prior year.

(1) -20- As a means of evaluating warehouse efficiency, the Company calculates the throughput rate as cases shipped divided by warehouse labor hours worked, excluding salaried hours

## Results of Operations

The current year results of operations are presented in comparison to the prior year within the section below. For a discussion of the results of fiscal 2021-2022 operations in comparison to fiscal 2020, 2021, refer to the Management's Discussion and Analysis of Financial Condition and Results of Operations within the prior year Annual Report on Form 10-K.

The Company believes that certain known or anticipated trends may cause future results to vary from historical results. The Company believes certain initiatives including both the supply chain transformation and merchandising transformation, transformations, as well as plans to gain market share in both the Retail and Wholesale segments will favorably impact future results. The Company anticipates that additional investments in capital expenditures will be necessary to support these and other programs. Offsetting the Company's expectations of favorable future results are macroeconomic headwinds including increasing labor costs, changes in consumer demand driven by inflation, elevated interest rates, lower inflation-related price gains, and the reduction in government food assistance programs. The Company is will also be exposed to other general commodity price changes such as utilities, insurance and fuel costs.

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The following table sets forth items from the Company's consolidated statements of earnings as a percentage of net sales and the percentage change from the preceding year:

		Percentage of Net Sales			Percentage Change		Percentage of Net Sales			Percentage Change
		2022	2021	2020			2023	2022	2021	
		(52	(52	(53	2022					
		Week	Week	Week	vs					
		s)	s)	s)	2021					
Net sales	Net sales	100	100	100	8.0	Net sales	100.0	100.0	100.0	0.9
		.0	.0	.0						
Gross profit	Gross profit	15.	15.	15.	6.7	Gross profit	15.3	15.5	15.7	(0.8)
		5	7	2						
Selling, general and administrative	Selling, general and administrative	14.	14.	13.	9.0	Selling, general and administrative	14.0	14.8	14.7	(4.3)
		8	7	9						
Paid time off transition adjustment	Paid time off transition adjustment	—	(0.2)	—	**	Paid time off transition adjustment	—	—	(0.2)	**
Acquisition and integration, net	Acquisition and integration, net	0.0	0.0	0.0	(51.6)	Acquisition and integration, net	0.0	0.0	0.0	**
Restructuring and asset impairment, net	Restructuring and asset impairment, net	0.0	0.0	0.3	(72.1)	Restructuring and asset impairment, net	0.1	0.0	0.0	**
Operating earnings	Operating earnings	0.7	1.3	1.1	(38.9)	Operating earnings	1.1	0.7	1.3	55.7
Other expenses, net	Other expenses, net	0.2	0.2	0.2	59.7	Other expenses, net	0.4	0.2	0.2	69.2
Earnings before income taxes	Earnings before income taxes	0.5	1.1	0.9	(52.4)	Earnings before income taxes	0.7	0.5	1.1	49.5
Income tax expense	Income tax expense	0.1	0.3	0.1	(50.2)	Income tax expense	0.2	0.1	0.3	44.3
Net earnings	Net earnings	0.4	0.8	0.8	(53.2)	Net earnings	0.5	0.4	0.8	51.3

Note: Certain totals do not sum due to rounding.

\*\* Not meaningful

**Net Sales** – The following table presents net sales by segment and variances in net sales between fiscal 2022-2023 and fiscal 2021-2022:

(In thousands)	Percentage of 2022 Total		Percentage of 2021 Total		Variance	Percentage Change	Percentage of 2023 Total		Percentage of 2022 Total		Variance	Percentage Change
	(52 Weeks)	Net Sales	(52 Weeks)	Net Sales			2023	Net Sales	2022	Net Sales		
Wholesale	6,845,236	71.0 %	6,349,753	71.1 %	\$ 495,483	7.8 %	\$ 6,919,217	71.1 %	\$ 6,845,236	71.0 %	\$ 73,981	1.1 %
Retail	2,797,864	29.0 %	2,581,286	28.9 %	\$ 216,578	8.4 %	2,810,002	28.9 %	2,797,864	29.0 %	12,138	0.4 %
Net sales	\$ 9,643,100	100.0 %	\$ 8,931,039	100.0 %	\$ 712,061	8.0 %	\$ 9,729,219	100.0 %	\$ 9,643,100	100.0 %	\$ 86,119	0.9 %

Net sales increased \$712.1 million \$86.1 million, or 8.0% 0.9%, to \$9.73 billion in 2023 compared to \$9.64 billion in 2022 compared to \$8.93 billion in 2021. 2022. The increase was attributable to increases in net sales in both the Wholesale and Retail segments, which were favorably impacted by inflation, higher pricing from inflationary trends and partially offset by lower volumes.

Wholesale net sales increased \$495.5 million \$74.0 million, or 7.8% 1.1%, to \$6.85 billion \$6.92 billion in 2022 2023 compared to \$6.35 billion \$6.85 billion in the prior year. The increase in net sales was due primarily to the inflationary impact on pricing, in addition to the acquisition of Great Lakes Foods in December 2022, which increased contributed \$73.6 million of additional net sales in 2023. The increase in net sales was partially offset by 10.4% compared to the prior year, while lower case volumes decreased net sales by 2.6% compared due, in large part, to marketplace demand changes from a certain national account customer. Overall, case volumes for the prior segment were down 4.5% in the current year.

Retail net sales increased \$216.6 million \$12.1 million, or 8.4% 0.4% to \$2.81 billion in 2023 compared to \$2.80 billion in 2022 compared to \$2.58 billion the prior year. Comparable store sales increased 2.0% in the prior current year. The increase in net sales was primarily due to inflationary pricing. Comparable store sales increased 7.7% pricing, offset by a 6.4% decline in unit volumes in the current year. Retail comparable store Additionally, lower fuel sales increased reduced reported net sales by 9.6% due to inflation, and decreased by 1.9% due to reduced item counts. 1.3% in the current year. The Company defines a retail store as comparable when it is in operation for 14 accounting periods (a period equals four weeks), regardless of remodels, expansions, or relocated stores. Acquired stores are included in the comparable sales calculation 13 periods after the acquisition date. Sales are compared to the same store's operations from the prior year period for purposes of calculation of comparable store sales. Fuel is excluded from the comparable sales calculation due to volatility in price. Comparable store sales is a widely used metric among retailers, which is useful to management and investors to assess performance. The Company's definition of comparable store sales may differ from similarly titled measures at other companies.

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**Gross Profit** – Gross profit represents net sales less cost of sales, which is described in further detail within Note 1, in the notes to the consolidated financial statements. Gross profit increased \$93.6 million decreased \$11.9 million, or 6.7% 0.8%, to \$1.50 billion \$1.49 billion in the current year compared to \$1.40 billion \$1.50 billion in the prior year primarily due to the increase in net sales, lower volumes. As a percent of net sales, gross profit decreased from 15.7% 15.5% to 15.5% 15.3% primarily due to an increase in LIFO expense of \$38.2 million, or 38 basis points, and a decrease lower inflation-related price change benefits in the Retail segment's margin rate. These lower margin rates were Wholesale segment compared to elevated levels in the prior year, partially offset by improvements benefits realized from the merchandising transformation initiative and lower LIFO expense. LIFO expense decreased \$40.7 million, or 42 basis points, compared to the prior year due to a significant decrease in margin rates within inflation trends by the Wholesale segment end of 2023.

**Selling, General and Administrative Expenses** – Selling, general and administrative ("SG&A") expenses consist primarily of operating costs related to retail and supply chain operations, including salaries and wages, employee benefits, facility costs, shipping and handling, equipment rental, depreciation, and out-bound freight, in addition to corporate administrative expenses. SG&A expenses increased \$118.3 million decreased \$61.5 million, or 9.0% 4.3%, to \$1.43 billion \$1.37 billion in the current year from \$1.31 billion \$1.43 billion in the prior year. As a percent of net sales, SG&A expenses increased decreased from 14.7% 14.8% to 14.8% 14.0% primarily due to higher corporate administrative costs, including increased lower incentive compensation of \$21.6 million, costs related expense compared to shareholder activism of \$7.3 million, and up-front investments in the merchandising transformation initiative of \$10.6 million. The increase in operating expenses was partially offset by prior year, a reduction in the supply chain expense rates as a result of efficiencies realized and lower fees associated with from the Company's supply chain transformation initiative, as well as lower health insurance costs.

**Paid Time Off Transition Adjustment** – Paid time off transition adjustment represents the transition impact of a new paid time off ("PTO") plan of \$21.4 million and cycling costs related to shareholder activism in the prior year. During the fourth quarter of 2021, the Company elected to transition from a grant-based policy to an accrual-based policy, which resulted in a lower required accrual balance at the end of the fiscal year. The former PTO plan granted employees their full PTO once annually based on an employee's service These decreases were partially offset by organizational realignment costs in the previous year. As the employee's compensation for future absences current year related to the employee's service in the previous year, the Company was required to accrue for the full PTO grant. Under the new PTO plan, employees earn rights ratably throughout the year based on hours worked. Upon transition at the end of 2021, the Company allowed employees to begin the new plan with the unused portion of the previous annual PTO grant. The transition impact represents the difference between the former plan's full PTO grant and the starting balance under the new previously announced go-to-market plan.

**Acquisition and Integration, net** – Acquisition and integration, net was \$0.3 million \$3.4 million in the current year compared to \$0.7 million \$0.3 million in the prior year. The expense Current year activity includes fees associated with due diligence activities, purchase agreement negotiation and strategic advice within the Retail segment, as well as incremental costs of integration related to an acquired business in the current Wholesale segment. Prior year expense primarily related to acquisitions in both the Retail and Wholesale segments, partially offset by the reversal of a litigation accrual, which was initially established at the time of the Martin's Super Markets acquisition. Prior year expense was associated with the integration of Martin's Super Markets.

**Restructuring and Asset Impairment, net** – In the current year, \$0.8 million \$9.2 million of net restructuring and asset impairment charges were incurred. The charges were largely composed of \$8.0 million of asset impairment charges in the Wholesale segment related to initiatives associated with continued supply chain network optimization in response to customer demand changes. Additional asset impairment charges of \$3.7 million in the current year were related to two store closures in the Retail segment and impairment losses related to a distribution location that sustained storm damage in the Wholesale segment. These charges were partially offset by \$2.6 million of gains on sales of assets in the current year primarily related to the sale of a store within the Retail segment. Prior year results included \$0.8 million of net restructuring and asset impairment charges, which were largely composed of \$5.1 million of asset impairment charges in the Retail segment, which primarily relate to restructuring of the segment's e-commerce delivery model, and \$1.8 million of provisions for closing charges associated with lease ancillary costs. These charges in the current year were mostly offset by \$6.3 million gain on sales of real property of previously closed locations within the Wholesale and Retail segments. Prior year results included \$2.9 million of net restructuring and asset impairment, which were largely composed of \$3.8 million of asset impairment charges primarily in the Retail segment which relate to prior year store closures and previously closed locations, as well as site closures in connection with the Company's supply chain transformation initiative within the Wholesale segment and \$1.5 million of provision for closing charges associated with lease ancillary costs. These charges in the prior year were partially offset by \$2.6 million gain on sales of pharmacy customer lists, equipment and real estate associated with the store closings in the Retail segment, in addition to the gains on the sale of vacant land in the Wholesale segment.

**Operating Earnings** – The following table presents operating earnings by segment and variances in operating earnings:

(In thousands)	2022 (52 Weeks)	Percent age of Net Sales	2021 (52 Weeks)	Percent age of Net Sales	Varianc e	Change in Percent age of Net Sales	2023		2022		Change in Percentage of Net Sales	
							Percentage of Net Sales	Variance	Percentage of Net Sales	Variance		
Wholesale	\$ 137	0.8 %	\$ 45,229	0.7 %	\$ 9,908	0.1 %	\$ 87,701	1.3 %	\$ 55,137	0.8 %	\$ 32,564	0.5 %
Retail	\$ 137	0.5 %	\$ 66,971	2.6 %	\$(53,564)	(2.1)	\$ 19,011	0.7 %	\$ 13,407	0.5 %	\$ 5,604	0.2 %
Operating earnings	\$ 544	0.7 %	\$ 120,300	1.3 %	\$(43,656)	(0.5)	\$ 106,712	1.1 %	\$ 68,544	0.7 %	\$ 38,168	0.4 %

The Company reported operating earnings of \$68.5 million \$106.7 million in the current year compared to \$112.2 million \$68.5 million in the prior year. The decrease increase of \$43.7 million \$38.2 million, or 38.9% 55.7%, was attributable to changes in net sales, gross profit and operating expenses discussed above as well as cycling the transition impact of the new PTO plan in the prior year of \$21.4 million. above.

Wholesale operating earnings increased \$9.9 million \$32.6 million, or 21.9% 59.1%, to \$55.1 million \$87.7 million in the current year from \$45.2 million \$55.1 million in the prior year. The increase was primarily attributable to increased sales, a higher gross margin rate and a lower rate of efficiencies realized from the Company's supply chain labor transformation initiative, lower incentive compensation, lower LIFO expense, and transportation expenses. These favorable variances benefits realized from the merchandising transformation initiative. The increases in operating earnings were partially offset by higher LIFO expense, an increase a decline in corporate administrative costs as well as cycling unit volume, the transition impact of the new PTO plan anticipated lower inflation related price change benefits compared to elevated levels in the prior year, of \$10.0 million. and increased restructuring and asset impairment charges.

Retail operating earnings decreased \$53.6 million increased \$5.6 million, or 80.0% 41.8%, to \$13.4 million \$19.0 million in the current year compared to \$67.0 million \$13.4 million in the prior year. The decrease increase in operating earnings was primarily attributable due to lower incentive compensation and reduced asset impairment and restructuring charges, partially offset by a lower gross profit rate, increased corporate administrative costs, decline in unit volume, greater investments in store wage rates, wages, and the transition impact of the new PTO plan of \$11.3 million an increase in the prior year.

**Interest Expense** – Interest expense increased \$8.9 million \$17.1 million, or 64.5% 75.0%, to \$22.8 million \$39.9 million in the current year from \$13.9 million \$22.8 million in the prior year primarily due to rising interest rates. Higher interest rates on the Company's credit facility were driven by federal monetary policy tightening and accounted for approximately \$13.3 million of the increase in interest expense in the current year. The weighted average interest rate for all borrowings, including loan fee amortization increased 1.83% 2.38% to 7.03% in 2023, compared to 4.65% in 2022, compared to 2.82% in 2021, 2022. The total debt balance increased \$97.9 million \$93.9 million to \$597.5 million in 2023, compared to \$503.6 million in 2022, compared to \$405.7 million in 2021, 2022.

**Income Taxes** – The Company's effective income tax rates were 25.5% and 26.4% for 2023 and 25.2% for 2022, and 2021, respectively. The differences from the federal statutory rate in the current year were primarily due to state taxes limitations on the deductibility of executive compensation and non-deductible expenses, partially offset by tax benefits associated with federal tax credits, discrete benefits due to a changes in tax contingencies, and discrete tax benefits related to stock compensation. In the prior year, the difference from the federal statutory rate was primarily due to state taxes, and the limitations on the deductibility of executive compensation, non-deductible expenses, partially offset by tax benefits associated with federal tax credits.

On March 27, 2020, the U.S. government enacted tax legislation to provide economic stimulus credits and support businesses and individuals during the COVID-19 pandemic, referred to as the CARES Act. In connection with the Coronavirus Aid, Relief and Economic Security ("CARES") Act, the Company recorded net discrete income tax benefits of \$9.3 million in 2020, associated with the additional deductibility of certain expenses combined with provisions which enable companies to carry back tax losses to years prior to the enactment of the Tax Cuts and Jobs Act, when the federal statutory income tax rate was 35%. In the first quarter of 2021, the Company received tax refunds totaling \$25.7 million related to the amended prior year returns, stock compensation.

#### Non-GAAP Financial Measures

In addition to reporting financial results in accordance with accounting principles generally accepted in the United States of America ("GAAP"), the Company also provides information regarding adjusted operating earnings, adjusted earnings from continuing operations, as well as per diluted share ("adjusted EPS"), net long-term debt to total capital, and adjusted earnings before interest, taxes, depreciation and amortization ("adjusted EBITDA"). These are non-GAAP financial measures, as defined below, and are used by management to allocate resources, assess performance against its peers and evaluate overall performance. The Company believes these measures provide useful information for both management and its investors. The Company believes these non-GAAP measures are useful to investors because they provide additional understanding of the trends and special circumstances that affect its business. These measures provide useful supplemental information that helps investors to establish a basis for expected performance and the ability to evaluate actual results against that expectation. The measures, when considered in connection with GAAP results, can be used to assess the overall performance of the Company as well as assess the Company's performance against its peers. These measures are also used as a basis for certain compensation programs sponsored by the Company. In addition, securities analysts, fund managers and other shareholders and stakeholders that communicate with the Company request its financial results in these adjusted formats.

At the beginning of 2022, the Company made a change to the Current year adjusted operating earnings, adjusted earnings from continuing operations, and adjusted EPS measures to EBITDA exclude, the impact of among other items, LIFO expense, or benefit. The Company believes the change reduces volatility organizational realignment, severance associated with temporary fluctuations cost reduction initiatives, a non-routine settlement related to a legal matter resulting from a previously closed operation that was resolved during the year and operating and non-operating costs associated with the postretirement plan amendment and settlement. Current year organizational realignment includes consulting and severance costs associated with the Company's change in inflation, enabling investors its go-to-market strategy as part of its long-term plan, which relates to best establish a basis for expected performance the reorganization of certain functions. Costs related to the postretirement plan amendment and settlement include non-operating expenses associated with recognition of plan settlement losses and amortization of the ability prior service credit related to evaluate actual results against that expectation and the industry in amendment of the retiree medical plan, which the Company operates. Prior year are adjusted operating earnings and out of adjusted earnings from continuing operations figures have been restated operations. Postretirement plan amendment and settlement costs also include operating expenses related to align with this change payroll taxes which are adjusted out of all non-GAAP financial measures. Each of the adjusted items are considered "non-operational" or "non-core" in presentation nature.

Current Prior year adjusted operating earnings, adjusted earnings from continuing operations, and adjusted EBITDA exclude, among other items, LIFO expense, costs related to shareholder activism, operating and non-operating costs associated with the postretirement plan amendment and settlement, non-operating costs associated with the write off of certain unamortized deferred financing costs related to the debt modification, organizational realignment, and severance associated with cost reduction initiatives. Costs related to shareholder activism include consulting, legal and other expenses incurred in relation to shareholder activism activities. Costs related to the postretirement plan amendment and settlement include non-operating expenses associated with recognition of plan settlement losses and amortization of the prior service credit related to the amendment of the retiree medical plan, which are adjusted out of adjusted earnings from continuing operations. Postretirement plan amendment and settlement costs also include operating expenses related to payroll taxes which are adjusted out of all non-GAAP financial measures. Organizational Prior year organizational realignment includes benefits for associates terminated as part of leadership transition plans, which do not meet the definition of a reduction-in-force.

Prior year adjusted earnings from continuing operations, and adjusted EBITDA exclude organizational realignment, severance associated with cost reduction initiatives and the transition impact of a new paid time off plan. The transition impact of a new paid time off plan is not expected to recur in the foreseeable future and is considered "non-operational" or "non-core" in nature. In 2020, adjusted operating earnings, adjusted earnings from continuing operations, and adjusted EBITDA exclude "Fresh Cut operating losses" subsequent to the decision to exit these operations during the first quarter, severance associated with cost reduction initiatives, organizational realignment costs and fees paid to a third-party advisory firm associated with Project One Team, the Company's initiative to drive growth while increasing efficiency and reducing costs. Pension termination income related to refunds from the annuity provider associated with the final reconciliation of participant data, as well as net tax benefits associated with the CARES Act, are excluded from adjusted earnings from continuing operations. These measures were adjusted for the impact of the 53<sup>rd</sup> week in 2020 to provide better comparability to other years. Each of the adjusted items are considered "non-operational" or "non-core" in nature.

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The Company In 2021, adjusted operating earnings, adjusted earnings from continuing operations, and adjusted EBITDA also exclude the transition impact of a new paid time off plan, which is unable not expected to provide a full reconciliation recur in the foreseeable future. Each of the GAAP to non-GAAP measures used adjusted items are considered "non-operational" or "non-core" in the fiscal 2023 outlook without unreasonable effort because it is not possible to predict certain adjustment items with a reasonable degree of certainty since they are not yet known or quantifiable, and do not relate to the Company's routine activities. These adjustments may include, among other items, restructuring and asset impairment activity, acquisition and integration costs, severance, costs related to the postretirement plan amendment and settlement, and organizational realignment costs, and the impact of adjustments to the LIFO inventory reserve. This information is dependent upon future events, which may be outside of the Company's control and could have a significant impact on its GAAP financial results for fiscal 2023. nature.

#### Adjusted Operating Earnings

Adjusted operating earnings is a non-GAAP operating financial measure that the Company defines as operating earnings plus or minus adjustments for items that do not reflect the ongoing operating activities of the Company and costs associated with the closing of operational locations.

The Company believes that adjusted operating earnings provide a meaningful representation of its operating performance for the Company as a whole and for its operating segments. The Company considers adjusted operating earnings as an additional way to measure operating performance on an ongoing basis. Adjusted operating earnings is meant to reflect the ongoing operating performance of all of its distribution and retail operations; consequently, it excludes the impact of items that could be considered "non-operating" or "non-core" in nature, and also excludes the contributions of activities classified as discontinued operations. Because adjusted operating earnings and adjusted operating earnings by segment are performance measures that management uses to allocate resources, assess performance against its peers and evaluate overall performance, the Company believes it provides useful information for both management and its investors. In addition, securities analysts, fund managers and other shareholders and stakeholders that communicate with the Company request its operating financial results in an adjusted operating earnings format.

Adjusted operating earnings is not a measure of performance under GAAP and should not be considered as a substitute for operating earnings, and other income statement data. The Company's definition of adjusted operating earnings may not be identical to similarly titled measures reported by other companies.

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Following is a reconciliation of operating earnings to adjusted operating earnings for 2023, 2022 2021 and 2020, 2021.

(In thousands)	2022	2021	2020
	(52 Weeks)	(52 Weeks)	(53 Weeks)
Operating earnings	\$ 68,544	\$ 112,200	\$ 102,406
Adjustments:			
LIFO expense	56,823	18,652	2,176
Acquisition and integration, net	343	708	421
Restructuring and asset impairment, net	805	2,886	24,398
Costs associated with Project One Team	—	—	493
Organizational realignment, net	1,859	589	455
Severance associated with cost reduction initiatives	831	423	5,154
Fresh Cut operating losses	—	—	2,262
Postretirement plan amendment and settlement	133	—	—
Costs related to shareholder activism	7,335	—	—
Expenses associated with tax planning strategies	—	—	82
Paid time off transition adjustment	—	(21,371)	—

Adjusted operating earnings	136,673	114,087	137,847
53rd week	—	—	(4,155)
Adjusted operating earnings, excluding 53rd week	<u>\$ 136,673</u>	<u>\$ 114,087</u>	<u>\$ 133,692</u>

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Following is a reconciliation of operating earnings by segment to adjusted operating earnings by segment for 2022, 2021 and 2020.

	2022	2021	2020
	(52 Weeks)	(52 Weeks)	(53 Weeks)
<b>Wholesale:</b>			
Operating earnings	\$ 55,137	\$ 45,229	\$ 36,047
Adjustments:			
LIFO expense	48,282	15,755	1,875
Acquisition and integration, net	239	—	—
Restructuring and asset impairment, net	(2,363)	427	21,085
Costs associated with Project One Team	—	—	329
Organizational realignment, net	1,160	374	304
Severance associated with cost reduction initiatives	689	310	3,709
Fresh Cut operating losses	—	—	2,262
Postretirement plan amendment and settlement	83	—	—
Costs related to shareholder activism	4,577	—	—
Expenses associated with tax planning strategies	—	—	55
Paid time off transition adjustment	—	(10,041)	—
Adjusted operating earnings	<u>107,804</u>	<u>52,054</u>	<u>65,666</u>
53rd week	—	—	(1,395)
Adjusted operating earnings, excluding 53rd week	<u>\$ 107,804</u>	<u>\$ 52,054</u>	<u>\$ 64,271</u>
<b>Retail:</b>			
Operating earnings	\$ 13,407	\$ 66,971	\$ 66,359
Adjustments:			
LIFO expense	8,541	2,897	301
Acquisition and integration, net	104	708	421
Restructuring and asset impairment, net	3,168	2,459	3,313
Costs associated with Project One Team	—	—	164
Organizational realignment, net	699	215	151
Severance associated with cost reduction initiatives	142	113	1,445
Postretirement plan amendment and settlement	50	—	—
Costs related to shareholder activism	2,758	—	—
Expenses associated with tax planning strategies	—	—	27
Paid time off transition adjustment	—	(11,330)	—
Adjusted operating earnings	<u>28,869</u>	<u>62,033</u>	<u>72,181</u>
53rd week	—	—	(2,760)
Adjusted operating earnings, excluding 53rd week	<u>\$ 28,869</u>	<u>\$ 62,033</u>	<u>\$ 69,421</u>

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<b>(In thousands)</b>	2023	2022	2021
Operating earnings	\$ 106,712	\$ 68,544	\$ 112,200
Adjustments:			
LIFO expense	16,104	56,823	18,652
Acquisition and integration, net	3,416	343	708
Restructuring and asset impairment, net	9,190	805	2,886
Organizational realignment, net	5,239	1,859	589

Severance associated with cost reduction initiatives	318	831	423
Legal settlement	900	—	—
Postretirement plan amendment and settlement	94	133	—
Costs related to shareholder activism	—	7,335	—
Paid time off transition adjustment	—	—	(21,371)
Adjusted operating earnings	<u>\$ 141,973</u>	<u>\$ 136,673</u>	<u>\$ 114,087</u>
<b>Wholesale:</b>			
Operating earnings	\$ 87,701	\$ 55,137	\$ 45,229
Adjustments:			
LIFO expense	12,388	48,282	15,755
Acquisition and integration, net	216	239	—
Restructuring and asset impairment, net	8,548	(2,363)	427
Organizational realignment, net	3,269	1,160	374
Severance associated with cost reduction initiatives	303	689	310
Legal settlement	900	—	—
Postretirement plan amendment and settlement	59	83	—
Costs related to shareholder activism	—	4,577	—
Paid time off transition adjustment	—	—	(10,041)
Adjusted operating earnings	<u>\$ 113,384</u>	<u>\$ 107,804</u>	<u>\$ 52,054</u>
<b>Retail:</b>			
Operating earnings	\$ 19,011	\$ 13,407	\$ 66,971
Adjustments:			
LIFO expense	3,716	8,541	2,897
Acquisition and integration, net	3,200	104	708
Restructuring and asset impairment, net	642	3,168	2,459
Organizational realignment, net	1,970	699	215
Severance associated with cost reduction initiatives	15	142	113
Postretirement plan amendment and settlement	35	50	—
Costs related to shareholder activism	—	2,758	—
Paid time off transition adjustment	—	—	(11,330)
Adjusted operating earnings	<u>\$ 28,589</u>	<u>\$ 28,869</u>	<u>\$ 62,033</u>

#### **Adjusted Earnings from Continuing Operations**

Adjusted earnings from continuing operations, as well as per diluted share ("adjusted EPS"), is a non-GAAP operating financial measure that the Company defines as net earnings plus or minus adjustments for items that do not reflect the ongoing operating activities of the Company and costs associated with the closing of operational locations.

The Company believes that adjusted earnings from continuing operations provide a meaningful representation of its operating performance for the Company. The Company considers adjusted earnings from continuing operations as an additional way to measure operating performance on an ongoing basis. Adjusted earnings from continuing operations is meant to reflect the ongoing operating performance of all of its distribution and retail operations; consequently, it excludes the impact of items that could be considered "non-operating" or "non-core" in nature, and excludes the contributions of activities classified as discontinued operations. Because adjusted earnings from continuing operations is a performance measure that management uses to allocate resources, assess performance against its peers and evaluate overall performance, the Company believes it provides useful information for both management and its investors. In addition, securities analysts, fund managers and other shareholders and stakeholders that communicate with the Company request its operating financial results in adjusted earnings from continuing operations format.

Adjusted earnings from continuing operations is not a measure of performance under GAAP and should not be considered as a substitute for net earnings, cash flows from operating activities and other income or cash flow statement data. The Company's definition of adjusted earnings from continuing operations may not be identical to similarly titled measures reported by other companies.

Following is a reconciliation of net earnings to adjusted earnings from continuing operations for 2023, 2022, 2021 and 2020.

	2022		2021		2020		2023		2022		2021	
	(52 Weeks)		(52 Weeks)		(53 Weeks)		per diluted		per diluted		per diluted	
	Earnings	per diluted share	Earnings	per diluted share	Earnings	per diluted share	Earnings	share	Earnings	share	Earnings	share
Net earnings	\$ 34,518	\$ 0.185	\$ 73,700	\$ 2.05	\$ 75,914	\$ .11	\$ 52,237	1.50	\$ 34,518	0.95	\$ 73,751	2.05
Adjustments:												
LIFO expense	56,823		18,652		2,176		16,104		56,823		18,652	
Acquisition and integration, net	34,303		70,800		42,100		3,416		343		708	
Restructuring and asset impairment, net	80,500		88,600		24,398		9,190		805		2,886	
Costs associated with Project One Team	—		—		49,300		—		—		—	
Organizational realignment, net	1,859		58,900		45,500		5,239		1,859		589	
Severance associated with cost reduction initiatives	83,100		42,300		15,400		318		831		423	
Fresh Cut operating losses	—		—		2,260		—		—		—	
Pension refund from annuity provider	(2,000)		—		—		—		(200)		—	
Legal settlement	—		—		—		900		—		—	
Postretirement plan amendment and settlement	(7,760)		—		—		(3,174)		(776)		—	
Expenses associated with tax planning strategies	—		—		82,000		—		—		—	
Costs related to shareholder activism	7,335		—		—		—		7,335		—	
Paid time off transition adjustment	—		(1,370)		—		—		—		(21,371)	
Write off of deferred financing costs	23,600		—		—		—		236		—	



Following is a reconciliation of net earnings to adjusted EBITDA for 2023, 2022, 2021 and 2020, 2021.

(In thousands)	2022	2021	2020	2023	2022	2021
	(52 Weeks)	(52 Weeks)	(53 Weeks)			
Net earnings	\$ 34,518	\$ 73,751	\$ 75,914	\$ 52,237	\$ 34,518	\$ 73,751
Income tax expense	12,397	24,906	9,450	17,888	12,397	24,906
Other expenses, net	21,629	13,543	17,042	36,587	21,629	13,543
Operating earnings	68,544	112,200	102,406	106,712	68,544	112,200
Adjustments:						
LIFO expense	56,823	18,652	2,176	16,104	56,823	18,652
Depreciation and amortization	94,180	92,711	89,504	98,639	94,180	92,711
Acquisition and integration, net	343	708	421	3,416	343	708
Restructuring and asset impairment, net	805	2,886	24,398	9,190	805	2,886
Cloud computing amortization	3,650	2,140	297	5,034	3,650	2,140
Costs associated with Project One Team	—	—	493	—	—	—
Organizational realignment, net	1,859	589	455	5,239	1,859	589
Severance associated with cost reduction initiatives	831	423	5,154	318	831	423
Stock-based compensation	8,589	6,975	6,265	12,536	8,589	6,975
Stock warrant	2,158	1,958	6,549	1,559	2,158	1,958
Non-cash rent	(3,444)	(4,059)	(4,733)	(2,599)	(3,444)	(4,059)
Fresh Cut operating losses	—	—	2,262	—	—	—
Loss (gain) on disposal of assets	—	—	—	259	1,073	(106)
Legal settlement	—	—	—	900	—	—
Postretirement plan amendment and settlement	—	—	—	94	133	—
Costs related to shareholder activism	—	—	—	—	7,335	—
Paid time off transition adjustment	—	—	—	—	—	(21,371)
Adjusted EBITDA				\$ 257,401	\$ 242,879	\$ 213,706
<b>Wholesale:</b>						
Operating earnings				\$ 87,701	\$ 55,137	\$ 45,229
Adjustments:						
LIFO expense				12,388	48,282	15,755
Depreciation and amortization				51,535	47,601	46,487
Acquisition and integration, net				216	239	—
Restructuring and asset impairment, net				8,548	(2,363)	427
Cloud computing amortization				3,414	2,537	1,517
Organizational realignment, net				3,269	1,160	374
Severance associated with cost reduction initiatives				303	689	310
Stock-based compensation				8,216	5,646	4,373
Stock warrant				1,559	2,158	1,958
Non-cash rent				(134)	(382)	811
(Gain) loss on disposal of assets				(83)	512	(42)
Legal settlement				900	—	—
Postretirement plan amendment and settlement				59	83	—
Costs related to shareholder activism				—	4,577	—
Paid time off transition adjustment				—	—	(10,041)
Adjusted EBITDA				\$ 177,891	\$ 165,876	\$ 107,158
<b>Retail:</b>						
Operating earnings				\$ 19,011	\$ 13,407	\$ 66,971

Adjustments:						
LIFO expense				3,716	8,541	2,897
Depreciation and amortization				47,104	46,579	46,224
Acquisition and integration, net				3,200	104	708
Restructuring and asset impairment, net				642	3,168	2,459
Cloud computing amortization				1,620	1,113	623
Organizational realignment, net				1,970	699	215
Severance associated with cost reduction initiatives				15	142	113
Stock-based compensation				4,320	2,943	2,602
Non-cash rent				(2,465)	(3,062)	(4,870)
Loss (gain) on disposal of assets	1,073	(106)	3,330	342	561	(64)
Postretirement plan amendment and settlement	133	—	—	35	50	—
Costs related to shareholder activism	7,335	—	—	—	2,758	—
Expenses associated with tax planning strategies	—	—	82	—	—	—
Paid time off transition adjustment	—	(21,371)	—	—	—	(11,330)
Adjusted EBITDA	242,879	213,706	239,059	\$ 79,510	\$ 77,003	\$ 106,548
53rd week	—	—	(4,246)	—	—	—
Adjusted EBITDA, excluding 53rd week	\$ 242,879	\$ 213,706	\$ 234,813	—	—	—

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Following is a reconciliation of operating earnings to adjusted EBITDA by segment for 2022, 2021 and 2020.

(In thousands)	2022	2021	2020
	(52 Weeks)	(52 Weeks)	(53 Weeks)
<b>Wholesale:</b>			
Operating earnings	\$ 55,137	\$ 45,229	\$ 36,047
Adjustments:			
LIFO expense	48,282	15,755	1,875
Depreciation and amortization	47,601	46,487	44,305
Acquisition and integration, net	239	—	—
Restructuring and asset impairment, net	(2,363)	427	21,085
Cloud computing amortization	2,537	1,517	200
Costs associated with Project One Team	—	—	329
Organizational realignment, net	1,160	374	304
Severance associated with cost reduction initiatives	689	310	3,709
Stock-based compensation	5,646	4,373	4,131
Stock warrant	2,158	1,958	6,549
Non-cash rent	(382)	811	182
Fresh Cut operating losses	—	—	2,262
Loss (gain) on disposal of assets	512	(42)	1,384
Postretirement plan amendment and settlement	83	—	—
Costs related to shareholder activism	4,577	—	—
Expenses associated with tax planning strategies	—	—	55
Paid time off transition adjustment	—	(10,041)	—
Adjusted EBITDA	165,876	107,158	122,417

53rd week	—	—	(1,466)
Adjusted EBITDA, excluding 53rd week	\$ 165,876	\$ 107,158	\$ 120,951
<b>Retail:</b>			
Operating earnings	\$ 13,407	\$ 66,971	\$ 66,359
Adjustments:			
LIFO expense	8,541	2,897	301
Depreciation and amortization	46,579	46,224	45,199
Acquisition and integration, net	104	708	421
Restructuring and asset impairment, net	3,168	2,459	3,313
Cloud computing amortization	1,113	623	97
Costs associated with Project One Team	—	—	164
Organizational realignment, net	699	215	151
Severance associated with cost reduction initiatives	142	113	1,445
Stock-based compensation	2,943	2,602	2,134
Non-cash rent	(3,062)	(4,870)	(4,915)
Loss (gain) on disposal of assets	561	(64)	1,946
Postretirement plan amendment and settlement	50	—	—
Costs related to shareholder activism	2,758	—	—
Expenses associated with tax planning strategies	—	—	27
Paid time off transition adjustment	—	(11,330)	—
Adjusted EBITDA	77,003	106,548	116,642
53rd week	—	—	(2,780)
Adjusted EBITDA, excluding 53rd week	\$ 77,003	\$ 106,548	\$ 113,862

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### Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. Management bases its estimates on historical experience and various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that may not be readily apparent from other sources. Based on the Company's ongoing review, the Company makes adjustments it considers appropriate under the facts and circumstances. The Company believes these accounting policies, and others set forth in Note 1, in the notes to the consolidated financial statements, should be reviewed as they are integral to understanding the Company's financial condition and results of operations. The Company has discussed the development, selection and disclosure of these accounting policies with the Audit Committee of the Board of Directors.

An accounting estimate is considered critical if: a) it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and b) different estimates that reasonably could have been used, or changes in the accounting estimates that are reasonably likely to occur periodically, could materially impact the Company's consolidated financial statements. The Company considers the following accounting policies to represent the more critical estimates and assumptions used in the preparation of its consolidated financial statements:

#### Customer Exposure and Credit Risk

**Allowance for Credit Losses.** The Company evaluates the collectability of its accounts and notes receivable based on a combination of factors. The Company estimates losses using an expected loss model, by considering both historical data and future expectations, including collection experience, expectations for current credit risks, accounts receivable payment status, the customer's financial health, as well as the Company's collateral and creditor position. The Company pools similar assets based on their credit risk characteristics, whereby many of its trade receivables are pooled based on certain customer or aging characteristics. After assets are pooled, an appropriate loss factor is applied based on management's expectations. Based on the estimated loss, the Company records an allowance to reduce the receivable to an amount the Company reasonably expects to collect. It is possible that the accuracy of the estimation process could be materially affected by different judgments as to the collectability based on information considered and further deterioration of accounts. If circumstances change (e.g., further evidence of material adverse creditworthiness, additional accounts become credit risks, store closures), the Company's estimates of the recoverability of amounts due could be reduced by a material amount, including to zero.

**Funds Advanced to Independent Retailers.** From time to time, the Company may advance funds to independent retailers which are earned by the retailers primarily through achieving specified purchase volume requirements, as outlined in their supply agreements with the Company, or in limited instances, for remaining a SpartanNash customer for a specified time period. These advances must be repaid if the purchase volume requirements are not met or if the retailer does not remain a customer for the specified time period. In the event these retailers are unable to repay these advances or otherwise experience an event of default, the Company may be unable to recover the unearned portion of the funds

advanced to these independent retailers. The Company evaluates the recoverability of these advances based on a number of factors, including anticipated and historical purchase volume, the value of any collateral, customer financial health and other economic and industry factors, and establishes a reserve for the advances as necessary.

**Guarantees of Debt and Lease Obligations of Others.** The Company may guarantee debt and lease obligations of independent retailers. In the event these retailers are unable to meet their debt service payments or otherwise experience an event of default, the Company would be unconditionally liable for the outstanding balance of their debt, and lease obligations, which would be due in accordance with the underlying agreements. The Company evaluates the likelihood that funding will occur and the expected credit losses on commitments to be funded using an expected loss model.

The Company has guaranteed the outstanding lease obligations of certain independent retailers. These guarantees, which are secured by certain business assets and personal guarantees of the respective independent retailers, represent the maximum undiscounted payments the Company would be required to make in the event of default. When a loss is expected, a liability representing the fair value of the obligations assumed under the guarantees is included in the accompanying consolidated financial statements.

The Company also subleases and assigns various leases to third parties. In circumstances when the Company becomes aware of factors that indicate deterioration in a third party's ability to meet its financial obligations guaranteed or assigned by SpartanNash, the Company records a specific reserve in the amount the Company reasonably believes it will be obligated to pay on the third party's behalf, net of any anticipated recoveries from the third party. It is possible that the accuracy of the estimation process could be materially affected by different judgments as to the obligations based on information considered and further deterioration of accounts, with the potential for a corresponding adverse effect on operating results and cash flows. Triggering these guarantees or obligations under assigned leases would not, however, result in cross default of the Company's debt, but could restrict resources available for general business initiatives.

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### **Goodwill and Other Indefinite-Lived Intangible Assets**

Goodwill and other indefinite-lived intangible assets are tested for impairment on an annual basis (during the last quarter of the year), or whenever events occur or circumstances change that would more likely than not indicate an impairment exists. The quantitative impairment evaluation of these assets involves the comparison of their fair value to their carrying values.

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**Goodwill.** The Company has two reporting units, which are the same as the Company's reportable segments. Fair values are determined based on the discounted cash flows and comparable market values of each reporting reportable segment. If a reporting unit's fair value is less than its carrying value, an impairment charge is recognized for the amount by which the carrying value exceeds the reporting unit's fair value, not to exceed the total amount of goodwill allocated to the reporting unit. The Company's goodwill impairment analysis also includes a comparison of the estimated fair value of the enterprise as a whole to the Company's total market capitalization. Therefore, a significant and sustained decline in the Company's stock price could result in goodwill impairment charges. During times of financial market volatility, significant judgment is given to determine the underlying cause of the decline and whether stock price declines are short-term in nature or indicative of an event or change in circumstances.

The Company estimates the fair value of the Wholesale and Retail reporting units based on the income approach using a discounted cash flow model and also incorporates the market approach using observable comparable company information. Key assumptions used by the Company in preparing the fair value estimate under the discounted cash flow method include:

- **Weighted average cost of capital ("WACC"):** The determination of the WACC incorporates current interest rates, equity risk premiums, and other market-based expectations regarding expected investment returns. The development of the WACC requires estimates of an equity rate of return and a debt rate of return, which are specific to the industry which the reporting unit operates.
- **Revenue growth rates:** The Company develops its forecasts based on recent sales data for existing operations and other factors, including management's future expectations.
- **Operating profits:** The Company uses historical operating margins as a basis for its projections within the discounted cash flow model. Margins within the forecast may vary due to future expectations related to both product and administrative costs.

The Company compares the results of the discounted cash flow model to observable comparable company market multiples to support the appropriateness of the fair value estimates. The Company concludes whether the implied multiple is reasonable with respect to the comparable company range, and whether the assumptions used in the fair value estimate are supportable.

As of the date of the most recent goodwill impairment test, which utilized data and assumptions as of July 17, 2022 October 8, 2023, the Wholesale and Retail reporting units had fair values that were substantially in excess of their carrying values. The Company has sufficient available information, both current and historical, to support its assumptions, judgments and estimates used in the goodwill impairment test; however, if actual results for the Wholesale or Retail segments are not consistent with the Company's estimates, it could result in the Company recording a non-cash impairment charge.

**Other Indefinite-Lived Intangible Assets.** The estimated fair value of these assets is computed by using a discounted cash flow method, such as the relief-from-royalty methodology. The Company determines future cash flows generated from the use of the asset, generally using estimated revenue growth rates and profitability rates and, in the case of the relief-

from-royalty methodology, royalty rates. Discount rates are determined based on the WACC of the reporting unit in which the asset resides, consistent with the discussion above. Impairments of these assets were \$8.6 million for 2020. There were no impairments of these assets in 2023, 2022 or 2021.

#### Impairment of Long-Lived Assets

Long-lived assets to be held and used are evaluated for impairment when events or circumstances indicate that the carrying amount of an asset may not be recoverable. When the undiscounted future cash flows are not sufficient to recover an asset's carrying amount, the fair value is compared to the carrying value to determine the impairment loss to be recorded. Long-lived assets are evaluated at the asset-group level, which is the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Impairments of long-lived assets were \$5.1 million, \$11.7 million, \$5.1 million and \$3.8 million for 2023, 2022 and \$11.5 million for 2022, 2021, and 2020, respectively.

Estimates of future cash flows and expected sales prices are judgments based upon the Company's experience and knowledge of operations. These estimates project cash flows several years into the future and are affected by changes in the economy, the competitive environment, real estate market conditions and inflation. If the book value of assets is determined to not be recoverable, future cash flows for the expected useful life of the asset group are discounted using a rate based on the WACC of the reporting reportable segment in which the asset resides, consistent with the discussion above.

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Long-lived assets to be disposed of are reported at the lower of carrying amount or fair value, less cost to sell. Management determines fair values using independent appraisals, quotes or expected sales prices developed by internal real estate professionals. Estimates of expected sales prices are judgments based upon the Company's experience, knowledge of market conditions and current offers received. Changes in market conditions, the economic environment and other factors, including the Company's ability to effectively compete and react to competitor openings, can significantly impact these estimates. While the Company believes that the estimates and assumptions underlying the valuation methodology are reasonable, different assumptions could result in a different outcome.

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#### Insurance Reserves

SpartanNash is self-insured through self-insurance retentions or high deductible programs. Refer to Note 1, in the notes to the consolidated financial statements for additional information related to self-insurance reserves.

Any projection of losses concerning insurance reserves is subject to a degree of variability. Among the causes of variability are unpredictable external factors affecting future inflation rates, discount rates, litigation trends, changing regulations, legal interpretations, benefit level changes and claim settlement patterns. Although the Company's estimates of liabilities incurred do not anticipate significant changes in historical trends for these variables, such changes could have a material impact on future claim costs and currently recorded liabilities. The impact of many of these variables may be difficult to estimate.

#### Income Taxes

The Company reviews deferred tax assets for recoverability and evaluates whether it is more likely than not that they will be realized. In making this evaluation, the Company considers positive and negative evidence associated with several factors, including the statutory recovery periods for the assets, along with available sources of future taxable income, including reversals of existing taxable temporary differences, tax planning strategies, history of taxable income or losses, and projections of future income or losses. A valuation allowance is provided when the Company concludes, based on all available evidence, that it is more likely than not that the deferred tax assets will not be realized during the applicable recovery period.

SpartanNash is subject to periodic audits by the Internal Revenue Service and other state and local taxing authorities. These audits may challenge certain of the Company's tax positions, such as the timing and amount of income credits and deductions and the allocation of taxable income to various tax jurisdictions. The Company evaluates its tax positions and establishes liabilities in accordance with the applicable accounting guidance on uncertainty in income taxes. These tax uncertainties are reviewed as facts and circumstances change and are adjusted accordingly. This requires significant management judgment in estimating final outcomes. Actual results could materially differ from these estimates and could significantly affect the Company's effective income tax rate and cash flows in future years.

#### Liquidity and Capital Resources

##### Cash Flow Information

The following table summarizes the Company's consolidated statements of cash flows for 2023, 2022, 2021 and 2020:2021:

(In thousands)	2022	2021	2020			
	(52 Weeks)	(52 Weeks)	(53 Weeks)	2023	2022	2021
<b>Cash flow activities</b>						
Net cash provided by operating activities	\$ 110,350	\$ 161,155	\$ 306,716	\$ 89,327	\$ 110,350	\$ 161,155

Net cash used in investing activities	(100,948)	(47,978)	(57,221)	(116,517)	(100,948)	(47,978)
Net cash provided by (used in) financing activities	9,018	(122,414)	(253,764)	16,068	9,018	(122,414)
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>18,420</b>	<b>(9,237)</b>	<b>(4,269)</b>			
<b>Net (decrease) increase in cash and cash equivalents</b>				<b>(11,122)</b>	<b>18,420</b>	<b>(9,237)</b>
<b>Cash and cash equivalents at beginning of year</b>	<b>10,666</b>	<b>19,903</b>	<b>24,172</b>	<b>29,086</b>	<b>10,666</b>	<b>19,903</b>
<b>Cash and cash equivalents at end of year</b>	<b>\$ 29,086</b>	<b>\$ 10,666</b>	<b>\$ 19,903</b>	<b>\$ 17,964</b>	<b>\$ 29,086</b>	<b>\$ 10,666</b>

Net cash provided by operating activities. Net cash provided by operating activities in the current year decreased compared to the prior year by \$50.8 million \$21.0 million, due primarily due to changes in working capital.

Net cash used in investing activities. Net cash used in investing activities increased \$53.0 million \$15.6 million in 2022 2023 compared to 2021 2022 primarily due to a decrease in net proceeds received from the sale of assets and an increase in capital expenditures in the current year in line with the Company's long-term plan. The increase in cash used in investing activities was partially offset by acquisitions in both the Wholesale and Retail segments in the current year and increase in capital expenditures.

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The Wholesale and Retail segments utilized 53.9% 62.8% and 46.1% 37.2% of capital expenditures, respectively, for the current year. Capital expenditures for 2022 2023 primarily related to investments in supply chain infrastructure, store remodels, IT upgrades and implementations, investments in supply chain infrastructure, office remodels, and equipment upgrades. Capital expenditures were \$97.3 million \$120.3 million in the current year and cloud computing application development spend, which is included in operating activities, was \$4.8 million \$7.0 million, compared to capital expenditures of \$79.4 million \$97.3 million and cloud computing application development spend of \$6.4 million \$4.8 million in the prior year. The Company expects total capital expenditures and cloud computing application development ("IT capital") spend to range from \$130.0 million to \$145.0 million in 2023. Capital expenditures and IT capital is a non-GAAP financial measure calculated by adding spending related to the development of cloud computing applications spend to capital expenditures, the most directly comparable GAAP measure. The Company is unable to provide a full reconciliation of the GAAP to non-GAAP measures without unreasonable effort because it is not possible to predict certain adjustment items with a reasonable degree of certainty since they are not yet known or quantifiable. This information is dependent upon future events, which may be outside of the Company's control and could have a significant impact on its GAAP financial results.

Net cash provided by (used in) financing activities. Net cash provided by financing activities increased \$131.4 million \$7.1 million in 2022 2023 compared to 2021 2022 primarily due to increased borrowings on a decrease in share repurchases in the senior credit facility, current year, partially offset by an increase a lower rate of borrowing in share repurchases, the current year on the Company's senior credit facility.

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### Debt Management

Long-term debt and finance lease liabilities, including the current portion, increased \$97.9 million \$93.9 million to \$503.6 million \$597.5 million as of December 31, 2022 December 30, 2023 from \$405.7 million \$503.6 million at January 1, 2022 December 31, 2022. The increase in total debt was driven by additional borrowings on the senior credit facility to fund changes in working capital, changes, acquisitions, purchases of property, plant and equipment, and share repurchases.

On November 17, 2022, The Company's Amended and Restated Loan and Security Agreement (the "Credit Agreement") matures on November 17, 2027. In 2023, the Company and certain of its subsidiaries entered into an amendment amendments (the "Amendment" "Amendments") to the Company's Amended and Restated Loan and Security Agreement (the "Credit Agreement"). The principal terms of the Amendment Amendments included an extension increasing the size of the maturity date of the loans from December 18, 2023 to November 17, 2027, an amendment to the interest rate grid such that rates for the Tranche A (\$975 million capacity) portion of the Company's revolving loans are now SOFR plus 1.25% credit facility by \$130 million in 2023. The Credit Agreement provides for a Tranche A revolving loan of up to SOFR plus 1.50% \$1.17 billion and a Tranche A-1 revolving loans (\$40 million capacity) are now SOFR plus 2.25% to SOFR plus 2.50%, and a reset loan with \$40 million of certain advance rates for the borrowing base. capacity. The Company has the ability to increase the amount borrowed under the Credit Agreement by an additional \$325 million \$195 million, subject to certain conditions. The Company's obligations under the Credit Agreement are secured by substantially all of the Company's personal and real property. The Company may repay all loans in whole or in part at any time without penalty.

### Liquidity

The Company's principal sources of liquidity are cash flows generated from operations and its senior secured credit facility. As of December 31, 2022 December 30, 2023, the senior secured credit facility had outstanding borrowings of \$445.9 million \$522.5 million. Additional available borrowings under the Company's Credit Agreement are based on stipulated advance rates on eligible assets, as defined in the Credit Agreement. The Credit Agreement requires that the Company maintain Excess Availability of 10% of the borrowing base, as defined in the Credit Agreement. The Company had excess availability after the 10% requirement of \$447.8 million \$483.2 million at December 31, 2022 December 30, 2023. Payment of dividends and repurchases of outstanding shares are permitted, provided that certain levels of excess availability are maintained. The Credit Agreement provides for the

issuance of letters of credit, of which \$17.7 million were outstanding as of **December 31, 2022** **December 30, 2023**. The Company anticipates that additional borrowings may be required to fund increased investments in expenditures related to both organic and inorganic initiatives included in the long-term strategic plan. The Company believes that cash generated from operating activities and available borrowings under the Credit Agreement will be sufficient to meet anticipated requirements for working capital, capital expenditures, dividend payments, and debt service obligations for the foreseeable future. However, there can be no assurance that the business will continue to generate cash flow at or above current levels or that the Company will maintain its ability to borrow under the Credit Agreement.

The Company's current ratio (current assets over current liabilities) was **1.63:1 at December 30, 2023 compared to 1.51:1 at December 31, 2022 compared to 1.46:1 at January 1, 2022**, and its investment in working capital was **\$417.6 million at December 30, 2023 compared to \$361.4 million at December 31, 2022 compared to \$301.4 million at January 1, 2022**. The net long-term debt to total capital ratio was **0.43:1 at December 30, 2023, compared to 0.38:1 at December 31, 2022, compared to 0.34:1 at January 1, 2022**. Total net long-term debt is a non-GAAP financial measure that is defined as long-term debt and finance lease liabilities, plus current portion of long-term debt and finance lease liabilities, less cash and cash equivalents. The Company believes both management and its investors find the information useful because it reflects the amount of long-term debt obligations that are not covered by available cash and temporary investments. Total net long-term debt is not a substitute for GAAP financial measures and may differ from similarly titled measures of other companies.

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Following is a reconciliation of "Long-term debt and finance lease liabilities" to net long-term debt, a non-GAAP measure, as of **December 31, 2022** **December 30, 2023** and **January 1, 2022** **December 31, 2022**.

<b>(In thousands)</b>	<b>December 31, 2022</b>	<b>January 1, 2022</b>	<b>December 30, 2023</b>	<b>December 31, 2022</b>
Current portion of long-term debt and finance lease liabilities	\$ 6,789	\$ 6,334	\$ 8,813	\$ 6,789
Long-term debt and finance lease liabilities	496,792	399,390	588,667	496,792
Total debt	503,581	405,724	597,480	503,581
Cash and cash equivalents	(29,086)	(10,666)	(17,964)	(29,086)
Net long-term debt	<u>\$ 474,495</u>	<u>\$ 395,058</u>	<u>\$ 579,516</u>	<u>\$ 474,495</u>

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The Company's material cash requirements as of **December 31, 2022** **December 30, 2023** primarily include long-term debt, including the estimated interest on the long-term debt, operating and finance lease liabilities, purchase obligations, and capital expenditure commitments. For additional information related to long-term debt and lease obligations, refer to Notes 6 and **9, 10**, respectively, in the notes to the consolidated financial statements. Purchase obligations include the amount of product the Company is contractually obligated to purchase in order to earn advanced contract monies that are receivable under the contracts, the majority of which are due in the next 12 months.

#### **Cash Dividends**

The Company declared a quarterly cash dividend of **\$0.215**, **\$0.21** **\$0.20** and **\$0.1925** **\$0.20** per common share in each quarter of **2023**, **2022**, **2021**, and **2020**, **2021**, respectively. Under the Credit Agreement, the Company is generally permitted to pay dividends in any year up to an amount such that all cash dividends, together with any cash distributions and share repurchases, do not exceed \$35.0 million. Additionally, the Company is generally permitted to pay cash dividends in excess of \$35.0 million in any year so long as its Excess Availability, as defined in the Credit Agreement, is in excess of 10% of the Total Borrowing Base, as defined in the Credit Agreement, before and after giving effect to the repurchases and dividends. Although the Company currently expects to continue to pay a quarterly cash dividend, adoption of a dividend policy does not commit the Board of Directors (the "Board") to declare future dividends. Each future dividend will be considered and declared by the Board at its discretion. Whether the Board continues to declare dividends depends on a number of factors, including the Company's future financial condition, anticipated profitability and cash flows and compliance with the terms of its credit facilities.

#### **Recently Adopted Accounting Standards**

Refer to Note 1, in the notes to the consolidated financial statements for additional information related to recently adopted accounting standards, as well as the anticipated effect of any impending accounting standards.

#### **Item 7A. Quantitative and Qualitative Disclosure About Market Risk**

The Company is exposed to industry related price changes on several commodities, such as dairy, meat and produce, that it buys and sells in both of its segments. These products are purchased for and sold from inventory in the ordinary course of business. The Company is also exposed to other general commodity price changes such as utilities, insurance and fuel costs.





At the beginning of the third quarter of 2022, the Company determined that the previously disclosed Food Distribution and Military operating segments should be combined into a single operating and reportable segment, Wholesale. Following the change in the operating segments, the Company evaluated the reporting units within the Wholesale segment and concluded that there was a single reporting unit within the Wholesale segment. As a result of this change, the Company now has two reporting units, which are the same as the Company's operating and reportable segments. The goodwill balance was \$182 million as of December 31, 2022, \$181 million of which was allocated to the Wholesale reporting unit ("Wholesale").

The Company evaluates goodwill for impairment annually, and more frequently if circumstances indicate the possibility of impairment. Due to the change in reporting units, the Company performed a test for impairment as of the beginning of the third quarter immediately before and after the change. The Company's evaluation of goodwill for impairment involves the comparison of the fair value of each reporting unit to its carrying value.

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The estimate of the fair value of Wholesale is based on the income approach using a discounted cash flow model and also incorporates the market approach using observable comparable company information. The principal factors used in the discounted cash flow analysis requiring management judgment are the determination of the weighted average cost of capital ("WACC"), revenue growth rates, and forecasted operating profits. Under the market approach, the Company compared the results of the discounted cash flow model to observable comparable company market multiples to support the appropriateness of the fair value estimates. The Company's goodwill impairment analysis also includes a comparison of the estimated fair value of the enterprise as a whole to the Company's total market capitalization. The Company concluded that the fair value of Wholesale was substantially in excess of its carrying value and, therefore, no impairment was recognized.

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Given the significant judgments made by management to estimate the fair value of Wholesale, performing audit procedures to evaluate the reasonableness of management's judgments and assumptions utilized in the impairment evaluation, particularly the determination of revenue growth rates, forecasted operating profits, and the WACC, required a high degree of auditor judgment and an increased extent of effort, including the need to involve our fair value specialists.

#### *How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to revenue growth rates, forecasted operating profits, and the selection of the WACC used by management to estimate the fair value of Wholesale included the following, among others:

- We tested the effectiveness of controls over management's goodwill impairment evaluation, including those over the determination of the fair value of Wholesale, such as controls related to the determination of revenue growth rates and forecasted operating profits, and the selection of the WACC.
- We evaluated management's ability to accurately forecast by comparing actual results to management's historical forecasts.
- We evaluated the reasonableness of management's determination of revenue growth rates and forecasted operating profits for Wholesale by comparing the growth rates and forecasts to:
  - Historical revenue growth rates and operating profits.
  - Internal communications to management and the Board of Directors.
  - Forecasted information included in Company press releases as well as in analyst and industry reports for the Company and certain of its peer companies.
- With the assistance of our fair value specialists, we evaluated the WACC for Wholesale, which included testing the underlying source information and the mathematical accuracy of the calculations and developing a range of independent estimates and comparing those to the WACC selected by management.
- With the assistance of our fair value specialists, we evaluated the market approach for Wholesale, which included evaluating the reasonableness of the selected guideline public companies and the resulting market multiples calculation, as well as benchmarking the selected multiple for Wholesale against these guideline public companies.

/s/ DELOITTE & TOUCHE LLP

Grand Rapids, Michigan

March 1, 2023 February 28, 2024

We have served as the Company's auditor since at least 1970; however, an earlier year could not be reliably determined.

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**CONSOLIDATED BALANCE SHEETS**  
SpartanNash Company and Subsidiaries

(In thousands)	December 31, 2022	January 1, 2022	December 30, 2023	December 31, 2022
<b>Assets</b>				
<b>Current assets</b>				
Cash and cash equivalents	\$ 29,086	\$ 10,666	\$ 17,964	\$ 29,086
Accounts and notes receivable, net	404,016	361,686	421,859	404,016
Inventories, net	571,065	522,324	575,226	571,065
Prepaid expenses and other current assets	62,244	62,517	62,440	62,244
<b>Total current assets</b>	<b>1,066,411</b>	<b>957,193</b>	<b>1,077,489</b>	<b>1,066,411</b>
<b>Property and equipment, net</b>	<b>610,220</b>	<b>577,359</b>	<b>649,071</b>	<b>610,220</b>
<b>Goodwill</b>	<b>182,160</b>	<b>181,035</b>	<b>182,160</b>	<b>182,160</b>
<b>Intangible assets, net</b>	<b>106,341</b>	<b>110,960</b>	<b>101,535</b>	<b>106,341</b>
<b>Operating lease assets</b>	<b>257,047</b>	<b>283,040</b>	<b>242,146</b>	<b>257,047</b>
<b>Other assets, net</b>	<b>84,382</b>	<b>97,195</b>	<b>103,174</b>	<b>84,382</b>
<b>Total assets</b>	<b>\$ 2,306,561</b>	<b>\$ 2,206,782</b>	<b>\$ 2,355,575</b>	<b>\$ 2,306,561</b>
<b>Liabilities and Shareholders' Equity</b>				
<b>Current liabilities</b>				
Accounts payable	\$ 487,215	\$ 447,451	\$ 473,419	\$ 487,215
Accrued payroll and benefits	103,048	86,315	78,076	103,048
Other accrued expenses	62,465	67,893	57,609	62,465
Current portion of operating lease liabilities	45,453	47,845	41,979	45,453
Current portion of long-term debt and finance lease liabilities	6,789	6,334	8,813	6,789
<b>Total current liabilities</b>	<b>704,970</b>	<b>655,838</b>	<b>659,896</b>	<b>704,970</b>
<b>Long-term liabilities</b>				
Deferred income taxes	66,293	63,692	73,904	66,293
Operating lease liabilities	239,062	266,701	226,118	239,062
Other long-term liabilities	33,376	38,292	28,808	33,376
Long-term debt and finance lease liabilities	496,792	399,390	588,667	496,792
<b>Total long-term liabilities</b>	<b>835,523</b>	<b>768,075</b>	<b>917,497</b>	<b>835,523</b>
<b>Commitments and contingencies (Note 8)</b>				
<b>Commitments and contingencies (Note 9)</b>				
<b>Shareholders' equity</b>				
Common stock, voting, no par value; 100,000 shares authorized; 35,079 and 35,948 shares outstanding	468,061	493,783		
Common stock, voting, no par value; 100,000 shares authorized; 34,610 and 35,079 shares outstanding			460,299	468,061
Preferred stock, no par value, 10,000 shares authorized; no shares outstanding	—	—	—	—
Accumulated other comprehensive income (loss)	2,979	(1,455)		
Accumulated other comprehensive income			796	2,979
Retained earnings	295,028	290,541	317,087	295,028

<b>Total shareholders' equity</b>	766,068	782,869	778,182	766,068
<b>Total liabilities and shareholders' equity</b>	\$ 2,306,561	\$ 2,206,782	\$ 2,355,575	\$ 2,306,561

See notes to consolidated financial statements.

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## CONSOLIDATED STATEMENTS OF EARNINGS

### SpartanNash Company and Subsidiaries

(In thousands, except per share amounts)	2022	2021	2020	2023	2022	2021
	(52 Weeks)	(52 Weeks)	(53 Weeks)			
<b>Net sales</b>	\$ 9,643,100	\$ 8,931,039	\$ 9,348,485	\$ 9,729,219	\$ 9,643,100	\$ 8,931,039
<b>Cost of sales</b>	8,145,625	7,527,160	7,923,520	8,243,663	8,145,625	7,527,160
<b>Gross profit</b>	1,497,475	1,403,879	1,424,965	1,485,556	1,497,475	1,403,879
<b>Operating expenses</b>						
Selling, general and administrative	1,427,783	1,309,456	1,297,740	1,366,238	1,427,783	1,309,456
Paid time off transition adjustment	—	(21,371)	—	—	—	(21,371)
Acquisition and integration, net	343	708	421	3,416	343	708
Restructuring and asset impairment, net	805	2,886	24,398	9,190	805	2,886
<b>Total operating expenses</b>	1,428,931	1,291,679	1,322,559	1,378,844	1,428,931	1,291,679
<b>Operating earnings</b>	68,544	112,200	102,406	106,712	68,544	112,200
<b>Other expenses and (income)</b>						
Interest expense	22,791	13,851	18,418			
<b>Interest expense, net</b>				39,887	22,791	13,851
Other, net	(1,162)	(308)	(1,376)	(3,300)	(1,162)	(308)
<b>Total other expenses, net</b>	21,629	13,543	17,042	36,587	21,629	13,543
<b>Earnings before income taxes</b>	46,915	98,657	85,364	70,125	46,915	98,657
Income tax expense	12,397	24,906	9,450	17,888	12,397	24,906
<b>Net earnings</b>	\$ 34,518	\$ 73,751	\$ 75,914	\$ 52,237	\$ 34,518	\$ 73,751
<b>Net earnings per basic common share</b>	\$ 0.98	\$ 2.07	\$ 2.12	\$ 1.53	\$ 0.98	\$ 2.07
<b>Net earnings per diluted common share</b>	\$ 0.95	\$ 2.05	\$ 2.12	\$ 1.50	\$ 0.95	\$ 2.05
<b>Weighted average shares outstanding:</b>						
Basic	35,279	35,639	35,861	34,211	35,279	35,639
Diluted	36,313	35,943	35,862	34,901	36,313	35,943

See notes to consolidated financial statements.

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**

**SpartanNash Company and Subsidiaries**

(In thousands)	2022	2021	2020
	(52 Weeks)	(52 Weeks)	(53 Weeks)
<b>Net earnings</b>	\$ 34,518	\$ 73,751	\$ 75,914
<b>Other comprehensive income (loss), before tax</b>			
Postretirement liability adjustment	5,875	1,087	(895)
<b>Income tax (expense) benefit related to items of other comprehensive income</b>	(1,441)	(266)	219
<b>Total other comprehensive income (loss), after tax</b>	4,434	821	(676)
<b>Comprehensive income</b>	\$ 38,952	\$ 74,572	\$ 75,238

See notes to consolidated financial statements.

**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**

**SpartanNash Company and Subsidiaries**

(In thousands)	Shares	Common	Accumulated Other Comprehensive	Retained	Total
	Outstanding	Stock	Income (Loss)	Earnings	
<b>Balance at December 28, 2019</b>	36,351	\$ 490,233	\$ (1,600)	\$ 198,905	\$ 687,538
Impact of adoption of ASU 2016-13 (Note 1)	—	—	—	(1,612)	(1,612)
Net earnings	—	—	—	75,914	75,914
Other comprehensive loss	—	—	(676)	—	(676)
Dividends - \$0.77 per share	—	—	—	(27,701)	(27,701)
Share repurchases	(861)	(10,000)	—	—	(10,000)
Stock-based compensation	—	6,299	—	—	6,299
Stock warrant, net of issuance costs of \$220	—	6,329	—	—	6,329
Issuance of common stock for stock bonus plan and associate stock purchase plan	39	594	—	—	594
Issuance of restricted stock	522	—	—	—	—
Cancellations of stock-based awards	(200)	(1,636)	—	—	(1,636)
<b>Balance at January 2, 2021</b>	35,851	\$ 491,819	\$ (2,276)	\$ 245,506	\$ 735,049
Net earnings	—	—	—	73,751	73,751
Other comprehensive income	—	—	821	—	821
Dividends - \$0.80 per share	—	—	—	(28,716)	(28,716)
Share repurchases	(265)	(5,325)	—	—	(5,325)

Stock-based compensation	—	6,868	—	—	6,868
Stock warrant	—	1,958	—	—	1,958
Issuance of common stock for stock bonus plan and associate stock purchase plan	37	715	—	—	715
Issuance of restricted stock	563	—	—	—	—
Cancellations of stock-based awards	(238)	(2,252)	—	—	(2,252)
<b>Balance at January 1, 2022</b>	<b>35,948</b>	<b>\$ 493,783</b>	<b>\$ (1,455)</b>	<b>\$ 290,541</b>	<b>\$ 782,869</b>
Net earnings	—	—	—	34,518	34,518
Other comprehensive income	—	—	4,434	—	4,434
Dividends - \$0.84 per share	—	—	—	(30,031)	(30,031)
Share repurchases	(1,047)	(32,494)	—	—	(32,494)
Stock-based compensation	—	8,353	—	—	8,353
Stock warrant	—	2,158	—	—	2,158
Issuance of common stock for associate stock purchase plan	21	587	—	—	587
Issuances of restricted stock	391	—	—	—	—
Cancellations of stock-based awards	(234)	(4,326)	—	—	(4,326)
<b>Balance at December 31, 2022</b>	<b>35,079</b>	<b>\$ 468,061</b>	<b>\$ 2,979</b>	<b>\$ 295,028</b>	<b>\$ 766,068</b>

(In thousands)	2023	2022	2021
<b>Net earnings</b>	<b>\$ 52,237</b>	<b>\$ 34,518</b>	<b>\$ 73,751</b>
<b>Other comprehensive (loss) income, before tax</b>			
Change in interest rate swap	(412)	—	—
Postretirement liability adjustment	(2,475)	5,875	1,087
<b>Total other comprehensive (loss) income, before tax</b>	<b>(2,887)</b>	<b>5,875</b>	<b>1,087</b>
<b>Income tax benefit (expense) related to items of other comprehensive (loss) income</b>	<b>704</b>	<b>(1,441)</b>	<b>(266)</b>
<b>Total other comprehensive (loss) income, after tax</b>	<b>(2,183)</b>	<b>4,434</b>	<b>821</b>
<b>Comprehensive income</b>	<b>\$ 50,054</b>	<b>\$ 38,952</b>	<b>\$ 74,572</b>

See notes to consolidated financial statements.

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## CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

### SpartanNash Company and Subsidiaries

(In thousands)	Shares Outstanding	Common Stock	Accumulated		Total
			Comprehensive (Loss) Income	Other Retained Earnings	
<b>Balance at January 2, 2021</b>	35,851	\$ 491,819	\$ (2,276)	\$ 245,506	\$ 735,049
Net earnings	—	—	—	73,751	73,751

Other comprehensive income	—	—	821	—	821
Dividends - \$0.80 per share	—	—	—	(28,716)	(28,716)
Share repurchases	(265)	(5,325)	—	—	(5,325)
Stock-based compensation	—	6,868	—	—	6,868
Stock warrant	—	1,958	—	—	1,958
Issuance of common stock for stock bonus plan and associate stock purchase plan	37	715	—	—	715
Issuance of restricted stock	563	—	—	—	—
Cancellations of stock-based awards	(238)	(2,252)	—	—	(2,252)
<b>Balance at January 1, 2022</b>	<b>35,948</b>	<b>\$ 493,783</b>	<b>\$ (1,455)</b>	<b>\$ 290,541</b>	<b>\$ 782,869</b>
Net earnings	—	—	—	34,518	34,518
Other comprehensive income	—	—	4,434	—	4,434
Dividends - \$0.84 per share	—	—	—	(30,031)	(30,031)
Share repurchases	(1,047)	(32,494)	—	—	(32,494)
Stock-based compensation	—	8,353	—	—	8,353
Stock warrant	—	2,158	—	—	2,158
Issuance of common stock for associate stock purchase plan	21	587	—	—	587
Issuance of restricted stock	391	—	—	—	—
Cancellations of stock-based awards	(234)	(4,326)	—	—	(4,326)
<b>Balance at December 31, 2022</b>	<b>35,079</b>	<b>\$ 468,061</b>	<b>\$ 2,979</b>	<b>\$ 295,028</b>	<b>\$ 766,068</b>
Net earnings	—	—	—	52,237	52,237
Other comprehensive loss	—	—	(2,183)	—	(2,183)
Dividends - \$0.86 per share	—	—	—	(30,178)	(30,178)
Share repurchases	(765)	(18,595)	—	—	(18,595)
Stock-based compensation	—	12,221	—	—	12,221
Stock warrant	—	1,559	—	—	1,559
Issuance of common stock for associate stock purchase plan and other stock-based awards	54	1,034	—	—	1,034
Issuances of restricted stock	448	—	—	—	—
Cancellations of stock-based awards	(206)	(3,981)	—	—	(3,981)
<b>Balance at December 30, 2023</b>	<b>34,610</b>	<b>\$ 460,299</b>	<b>\$ 796</b>	<b>\$ 317,087</b>	<b>\$ 778,182</b>

See notes to consolidated financial statements.

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## CONSOLIDATED STATEMENTS OF CASH FLOWS

### SpartanNash Company and Subsidiaries

(In thousands)	2022	2021	2020			
	(52 Weeks)	(52 Weeks)	(53 Weeks)	2023	2022	2021
<b>Cash flows from operating activities</b>						
Net earnings	\$ 34,518	\$ 73,751	\$ 75,914	\$ 52,237	\$ 34,518	\$ 73,751
Adjustments to reconcile net earnings to net cash provided by operating activities:						
Non-cash restructuring, asset impairment and other charges	553	2,973	22,422	9,089	553	2,973

Depreciation and amortization	94,180	92,711	89,876	98,639	94,180	92,711
Non-cash rent	(4,339)	(4,854)	(5,550)	(3,397)	(4,339)	(4,854)
LIFO expense	56,823	18,652	2,176	16,104	56,823	18,652
Postretirement benefits (income) expense	(890)	1,611	1,775	(2,316)	(890)	1,611
Deferred income taxes	1,415	17,603	2,457	8,229	1,415	17,603
Stock-based compensation expense	8,353	6,868	6,299	12,268	8,353	6,868
Stock warrant	2,158	1,958	6,549	1,559	2,158	1,958
Loss (gain) on disposals of assets	1,073	(106)	3,330	259	1,073	(106)
Other operating activities	2,183	1,262	1,416	1,741	2,183	1,262
Changes in operating assets and liabilities:						
Accounts receivable	(38,168)	(4,005)	(12,936)	(17,228)	(38,168)	(4,005)
Inventories	(92,346)	320	(7,030)	(21,925)	(92,346)	320
Prepaid expenses and other assets	4,683	(18,992)	(7,724)	(14,913)	4,683	(18,992)
Accounts payable	28,069	(18,286)	65,197	(17,478)	28,069	(18,286)
Accrued payroll and benefits	16,855	(37,331)	66,722	(27,348)	16,855	(37,331)
Current income taxes	4,658	17,475	(12,552)	(424)	4,658	17,475
Other accrued expenses and other liabilities	(9,428)	9,545	8,375	(5,769)	(9,428)	9,545
<b>Net cash provided by operating activities</b>	<b>110,350</b>	<b>161,155</b>	<b>306,716</b>	<b>89,327</b>	<b>110,350</b>	<b>161,155</b>
<b>Cash flows from investing activities</b>						
Purchases of property and equipment	(97,280)	(79,427)	(67,298)	(120,330)	(97,280)	(79,427)
Net proceeds from the sale of assets	36,825	29,375	9,201	4,333	36,825	29,375
Acquisitions, net of cash acquired	(41,429)	—	—	(780)	(41,429)	—
Loans to customers	—	(180)	(1,847)	(750)	—	(180)
Payments from customers on loans	1,358	2,317	2,739	1,298	1,358	2,317
Other investing activities	(422)	(63)	(16)	(288)	(422)	(63)
<b>Net cash used in investing activities</b>	<b>(100,948)</b>	<b>(47,978)</b>	<b>(57,221)</b>	<b>(116,517)</b>	<b>(100,948)</b>	<b>(47,978)</b>
<b>Cash flows from financing activities</b>						
Proceeds from senior secured credit facility	1,468,649	1,374,478	1,383,637	1,359,560	1,468,649	1,374,478
Payments on senior secured credit facility	(1,382,409)	(1,455,016)	(1,584,293)	(1,282,948)	(1,382,409)	(1,455,016)
Proceeds from other long-term debt	—	—	—	1,000	—	—
Repayment of other long-term debt and finance lease liabilities	(6,849)	(5,710)	(6,510)	(8,157)	(6,849)	(5,710)
Share repurchases	(32,494)	(5,325)	(10,000)	(18,527)	(32,494)	(5,325)
Net payments related to stock-based award activities	(4,326)	(2,252)	(1,636)	(3,981)	(4,326)	(2,252)
Dividends paid	(29,708)	(28,327)	(34,509)	(29,660)	(29,708)	(28,327)
Financing fees paid	(3,845)	(262)	(233)	(1,219)	(3,845)	(262)
Stock warrant issuance costs	—	—	(220)	—	—	—
<b>Net cash provided by (used in) financing activities</b>	<b>9,018</b>	<b>(122,414)</b>	<b>(253,764)</b>	<b>16,068</b>	<b>9,018</b>	<b>(122,414)</b>
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>18,420</b>	<b>(9,237)</b>	<b>(4,269)</b>	<b>(11,122)</b>	<b>18,420</b>	<b>(9,237)</b>
<b>Net (decrease) increase in cash and cash equivalents</b>				<b>(11,122)</b>	<b>18,420</b>	<b>(9,237)</b>
<b>Cash and cash equivalents at beginning of year</b>	<b>10,666</b>	<b>19,903</b>	<b>24,172</b>	<b>29,086</b>	<b>10,666</b>	<b>19,903</b>
<b>Cash and cash equivalents at end of year</b>	<b>\$ 29,086</b>	<b>\$ 10,666</b>	<b>\$ 19,903</b>	<b>\$ 17,964</b>	<b>\$ 29,086</b>	<b>\$ 10,666</b>

See notes to consolidated financial statements.

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**SPARTANNASH COMPANY AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1 – Summary of Significant Accounting Policies and Basis of Presentation**

*Principles of Consolidation:* The consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") and include the accounts of SpartanNash Company and its subsidiaries ("SpartanNash" or "the Company"). Intercompany accounts and transactions have been eliminated.

*Fiscal Year:* The Company's fiscal year end is the Saturday nearest to December 31. The following discussion is as of and for the fiscal years ending or ended December 31, 2022 December 30, 2023 ("2022" 2023" or "current year"), January 1, 2022 December 31, 2022 ("2021" 2022" or "prior year") and January 2, 2021 January 1, 2022 ("2020" 2021"), all of which include 52 weeks, with the exception of 2020, which includes 53 weeks. All fiscal quarters are 12 weeks, except for the Company's first quarter, which is 16 weeks. The fourth quarter of 53-week years include 13 weeks.

*Use of Estimates:* The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect amounts reported therein. Due to the inherent uncertainty involved in making estimates, actual results reported in future periods might differ from those estimates.

*Revenue Recognition:* The Company recognizes revenue when it satisfies a performance obligation by transferring control of the promised goods and services to a customer, in an amount that reflects the consideration that it expects to receive in exchange for those goods or services. This is achieved through applying the following five-step model:

- Identification of the contract, or contracts, with a customer
- Identification of the performance obligations in the contract
- Determination of the transaction price
- Allocation of the transaction price to the performance obligations in the contract
- Recognition of revenue when, or as, the Company satisfies a performance obligation

The Company generates substantially all of its revenue from contracts with customers, whether formal or implied. Sales taxes collected from customers are remitted to the appropriate taxing jurisdictions and are excluded from sales revenue as the Company considers itself a pass-through conduit for collecting and remitting sales taxes, with the exception of taxes assessed during the procurement process of select inventories. Greater than 99% of the Company's revenues are recognized at a point in time. Revenues from product sales are recognized when control of the goods is transferred to the customer, which occurs at a point in time, typically upon delivery or shipment to the customer, depending on shipping terms, or upon customer check-out in a corporate-owned retail store. Freight revenues are also recognized upon delivery, at a point in time. Other revenues, including revenues from value-added services and leases, are recognized as earned, over a period of time. All of the Company's revenues are domestic, as the Company has no performance obligations on international shipments subsequent to delivery to the domestic port.

The Company evaluates whether it is a principal (i.e., reports revenues on a gross basis) or an agent (i.e., reports revenues on a net basis) with respect to each contract with customers.

Based upon the nature of the products the Company sells, its customers have limited rights of return, which are immaterial. Discounts provided by the Company to customers at the time of sale are recognized as a reduction in sales as the products are sold. Certain contracts include rebates and other forms of variable consideration, including up-front rebates, rebates in arrears, rebatable incentives, non-cash incentives including stock warrants, and product incentives, which may have tiered structures based on purchase volumes and which are accounted for as variable consideration. To the extent the transaction price includes variable consideration, the Company estimates the amount of variable consideration that should be included in the transaction price utilizing either the expected value method or the most likely amount method depending on the nature of the variable consideration. Variable consideration is included in the transaction price if, in the Company's judgment, it is probable that a significant future reversal of cumulative revenue under the contract will not occur.

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*Cost of Sales:* Cost of sales represents the cost of inventory sold during the period, which for all non-production operations includes purchase costs, in-bound freight, physical inventory adjustments, markdowns and promotional allowances and excludes warehousing costs, depreciation and other administrative expenses. For the Company's food processing operations which wound down during fiscal 2020, cost of sales included direct product and production costs, inbound freight, purchasing and receiving costs, utilities, depreciation, and other indirect production costs and excludes out-bound freight and other administrative expenses. The Company's cost of sales and gross profit may not be identical to similarly titled measures reported by other companies. Vendor allowances and credits that relate to the Company's buying and merchandising activities consist primarily of promotional allowances, which are allowances on purchased quantities and, to a lesser extent, slotting allowances, which are billed to vendors for the Company's merchandising costs such as setting up warehouse infrastructure. Vendor allowances are recognized as a reduction in cost of sales when the related product is sold. Lump sum payments received for multi-year contracts are amortized over the life of the contracts based on contractual terms. The Wholesale segment includes shipping and handling costs in the selling, general and administrative section of operating expenses within the consolidated statements of earnings.

*Cash and Cash Equivalents:* Cash and cash equivalents consists of cash and highly liquid investments with an original maturity of three months or less at the date of purchase.

**Accounts and Notes Receivable:** Accounts and notes receivable are presented net of allowances for credit losses of \$7.05.8 million and \$5.17.0 million as of December 31, 2022 December 30, 2023 and January 1, 2022 December 31, 2022, respectively. The Company estimates losses using an expected loss model, considering both historical data and future expectations, including collection experience, expectations for current credit risks, accounts receivable payment status, the customer's financial health, as well as the Company's collateral and creditor position. The Company pools similar assets based on their credit risk characteristics, whereby many of its trade receivables are pooled based on certain customer or aging characteristics. After assets are pooled, an appropriate loss factor is applied based on management's expectations. The Company also records specific reserves for credit losses in certain circumstances, circumstances using a similar estimated loss model. Operating results include net bad debt (income) expense (income) of \$(0.4) million, \$3.3 million and \$(0.3) million for 2023, 2022 and \$2.7 million for 2022, 2021, and 2020, respectively.

Accounts and notes receivable are comprised composed of the following:

(In thousands)	December 31, 2022	January 1, 2022	December 30, 2023	December 31, 2022
Customer notes receivable	\$ 1,622	\$ 1,915		
Current notes receivable			\$ 2,613	\$ 1,622
Customer accounts receivable	375,550	328,093	379,208	375,550
Other receivables	32,942	36,092	44,649	32,942
Allowance for credit losses	(6,098)	(4,414)	(4,611)	(6,098)
Net accounts and current notes receivable	\$ 404,016	\$ 361,686	\$ 421,859	\$ 404,016
Long-term notes receivable	\$ 8,573	\$ 7,061	\$ 7,369	\$ 8,573
Allowance for credit losses	(948)	(731)	(1,212)	(948)
Net long-term notes receivable	\$ 7,625	\$ 6,330	\$ 6,157	\$ 7,625

**Inventory Valuation:** Inventories are valued at the lower of cost or net realizable value. Approximately 87.5 90.4% and 84.0 87.5% of the Company's inventories were valued on the last-in, first-out (LIFO) method at December 31, 2022 December 30, 2023 and January 1, 2022 December 31, 2022, respectively. If replacement cost had been used, inventories would have been \$138.6 154.7 million and \$81.8 138.6 million higher at December 31, 2022 December 30, 2023 and January 1, 2022 December 31, 2022, respectively. The replacement cost method utilizes the most current unit purchase cost to calculate the value of inventories. During 2023, 2022 2021 and 2020, 2021, certain inventory quantities were reduced which resulted in the liquidation of LIFO inventory carried at lower costs prevailing in prior years, the effect of which decreased the LIFO provision by \$2.1 4.0 million, \$2.1 million and \$1.4 2.1 million in 2023, 2022 2021 and 2020, 2021, respectively. The Company accounts for its Wholesale segment inventory using a perpetual system and utilizes the retail inventory method ("RIM") to value inventory for center store products in the Retail segment. Under RIM, inventory is stated at cost, determined by applying a cost ratio to the retail value of inventories. Fresh, pharmacy and fuel products are accounted for at cost in the Retail segment. The Company records estimates allowances for inventory shortages based on the results of recent physical counts to provide for estimated shortages from the last physical count to the financial statement date. counts.

**Goodwill and Other Intangible Assets:** Goodwill represents the excess purchase price over the fair value of tangible net assets acquired in business combinations after amounts have been allocated to intangible assets. Goodwill is not amortized, but is reviewed for impairment during the last quarter of each year, or whenever events occur or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount, using a discounted cash flow model and comparable market values of each reporting reportable segment. Measuring the fair value of reporting units is a Level 3 measurement under the fair value hierarchy. See Note 7, for a discussion of fair value levels.

Intangible assets primarily consist of trade names, customer relationships, pharmacy prescription lists, non-compete agreements, liquor licenses and franchise fees. The following assets are amortized on a straight-line basis over the period of time in which their expected benefits will be realized: customer relationships and prescription lists and customer relationships (period of expected benefit reflecting the pattern in which the economic benefits are consumed), non-compete agreements and franchise fees (length of agreements), and trade names with definite lives (expected life of the assets). Indefinite-lived trade names and liquor licenses are not amortized but are tested at least annually for impairment.

**Property and Equipment:** Property and equipment are recorded at cost. Expenditures which improve or extend the life of the respective assets are capitalized, whereas expenditures for normal repairs and maintenance are charged to operations as incurred. Depreciation expense on land improvements, buildings and improvements, and equipment is computed using the straight-line method as follows:

Land improvements	15 years
Buildings and improvements	15 to 40 years
Equipment	3 to 15 years

Property under finance leases and leasehold improvements are amortized on a straight-line basis over the shorter of the remaining terms of the leases or the estimated useful lives of the assets. Internal use software is included in Property and equipment, net and amounted to totaled \$45.9 million and \$47.3 million and \$42.6 million as of December 31, 2022 December 30, 2023 and January 1, 2022 December 31, 2022, respectively.

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*Cloud Computing Arrangements:* Implementation costs for software that is accessed in hosted cloud computing arrangements is accounted for in accordance with Accounting Standards Codification ("ASC") 350, *Intangibles-Goodwill and Other*. Capitalized development costs of hosted cloud computing arrangements include configuration, installation, licenses, other upfront costs and internal labor costs of employees devoted to the cloud computing software implementation project. Once a project is complete, amortization is computed using the straight-line method over the term of the associated hosting arrangement, including any options to extend the hosting arrangement that the Company is reasonably certain to exercise, generally 3 to 8 years. These costs are classified in the consolidated balance sheets in "Prepaid expenses and other current assets" or "Other assets, net" based on the term of the arrangement, and the related cash flows are presented as cash outflows from operations. The net book value of these implementation costs was \$21.3 24.3 million and \$20.6 21.3 million, as of December 31, 2022 December 30, 2023 and January 1, 2022 December 31, 2022, respectively.

*Leases:* At the commencement or modification of a contract, the Company determines whether a lease exists based on 1) the identification of an underlying asset and 2) the right to control the use of the identified asset. When the Company is a lessee, leases are classified as either operating or finance. Operating and finance lease assets represent the Company's right to use an underlying asset for the lease term, while lease obligations represent the Company's obligation to make lease payments arising from the lease. Most of the Company's lease agreements include variable payments related to executory costs for property taxes, utilities, insurance, maintenance and other occupancy costs related to the leased asset. Additionally, certain of the Company's lease agreements include rental payments based on a percentage of retail sales over contractual levels or, in the case of transportation equipment, provisions requiring payment of variable rent based upon miles driven. These variable payments are not included in the measurement of the lease liability or asset and are expensed as incurred. Leases with an initial expected term of 12 months or less are not recorded in the consolidated balance sheets and the related lease expense is recognized on a straight-line basis over the lease term.

Lease assets and obligations are recognized at the lease commencement date based on the present value of lease payments and initial direct costs incurred, less incentives, over the lease term. In the absence of stated or implicit interest rates within lease contracts, incremental borrowing rates are estimated based on the Company's borrowing rate as of the lease commencement date to determine the present value of lease payments. Incremental borrowing rates are determined by using the yield curve based on the Company's creditworthiness on a collateralized basis. The Company includes option periods in the assumed lease term when it is reasonably certain that the options will be exercised. Operating lease assets and liabilities are reported discretely in the consolidated balance sheets. Finance lease assets are included in Property and equipment, net and finance lease liabilities are included in Long-term debt and finance lease liabilities within the Company's consolidated balance sheets.

*Impairment of Long-Lived Assets:* The Company reviews and evaluates long-lived assets for impairment when events or circumstances indicate that the carrying amount of an asset may not be recoverable. When the undiscounted expected future cash flows are not sufficient to recover an asset's carrying amount, the fair value is compared to the carrying value to determine the impairment loss to be recorded. Long-lived assets to be sold or disposed of are reported at the lower of carrying amount or fair value, less the cost to sell. Fair values are determined by independent appraisals or expected sales prices based upon market participant data developed by third party professionals or by internal licensed real estate professionals. Estimates of future cash flows and expected sales prices are judgments based upon the Company's experience and knowledge of operations. These estimates project cash flows several years into the future and are affected by changes in the Company's performance, economy, real estate market conditions and inflation. The Company evaluates definite-lived intangible asset and operating and finance lease asset impairments in conjunction with testing of the related asset groups as described above. Impairment reserves are applied proportionally as a reduction to the assets in the asset group, including lease assets.

*Reserves for Closed Properties:* The Company records reserves for closed properties that are subject to long-term lease commitments based upon the lease ancillary costs from the date of closure to the end of the remaining lease term. Future cash flows are based on historical expenses, contractual lease terms and knowledge of the geographic area in which the closed site is located. These estimates are subject to multiple factors, including inflation, ability to sublease the property and other economic conditions. The reserved expenses are paid over the remaining lease terms, which range from 1 to 6 5 years. Subsequent adjustments to closed property reserves are made when actual exit costs differ from the original estimates. These adjustments are made for changes in estimates in the period in which the changes become known. The current portion of the future closed property obligations is included in "Other accrued expenses," and the long-term portion is included in "Other long-term liabilities" in the consolidated balance sheets.

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*Debt Issuance Costs:* Debt issuance costs are amortized over the term of the related financing agreement and are included as a direct deduction from the carrying amount of the related debt liability in "Long-term debt and finance lease liabilities" in the consolidated balance sheets.

*Insurance Reserves:* SpartanNash is insured through self-insurance retentions or high deductible programs for workers' compensation, general liability, and automobile liability, and is also self-insured for healthcare costs. Self-insurance liabilities are recorded based on claims filed and an estimate of claims incurred but not yet reported. Workers' compensation, general liability and automobile liabilities are actuarially estimated based on available historical information on an undiscounted basis. The Company has purchased stop-loss coverage to limit its exposure to any significant exposure on a per claim basis for its self-insurance retentions and high deductible programs. On a per claim basis, the Company's

exposure is up to \$0.5 million for workers' compensation and general liability and \$2.0 million for automobile liability and liability. For healthcare, the Company's exposure is up to \$0.6 million in annual claims for healthcare per each covered life per year individual.

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A summary of changes in the Company's self-insurance liability is as follows:

(In thousands)	2022	2021	2020	2023	2022	2021
Balance at beginning of year	\$ 19,445	\$ 16,737	\$ 16,780	\$ 18,157	\$ 19,445	\$ 16,737
Expenses	64,386	72,101	62,999	63,722	64,386	72,101
Claim payments, net of employee contributions	(65,674)	(69,393)	(63,042)	(63,700)	(65,674)	(69,393)
Balance at end of year	\$ 18,157	\$ 19,445	\$ 16,737	\$ 18,179	\$ 18,157	\$ 19,445

The current portion of the self-insurance liability was \$10.2 10.9 million and \$11.9 10.2 million as of December 31, 2022 December 30, 2023 and January 1, 2022 December 31, 2022, respectively, and is included in "Other accrued expenses" in the consolidated balance sheets. The long-term portion was \$7.9 7.3 million and \$7.5 7.9 million as of December 31, 2022 December 30, 2023 and January 1, 2022 December 31, 2022, respectively, and is included in "Other long-term liabilities" in the consolidated balance sheets.

**Income Taxes:** Deferred income tax assets and liabilities are computed for differences between the financial statement and tax bases of assets and liabilities that will result in taxable or deductible amounts in the future. Such deferred income tax asset and liability computations are based on enacted tax laws and rates applicable to periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amounts expected to be realized. Income tax expense is the tax payable or refundable for the period plus or minus the change during the period in deferred and other tax assets and liabilities.

**Earnings per share:** Earnings per share ("EPS") is computed using the two-class method. The two-class method determines EPS for each class of common stock and participating securities according to dividends and their respective participation rights in undistributed earnings. Outstanding nonvested restricted stock incentive awards under the Company's 2015 Plan contain nonforfeitable rights to dividends or dividend equivalents, which participate in undistributed earnings with common stock. These awards are classified as participating securities and are included in the calculation of basic earnings per share. Awards under the 2020 Plan do not contain nonforfeitable rights to dividends or dividend equivalents and are therefore not classified as participating securities. The dilutive impact of both the restricted stock awards and warrants are presented below, as applicable. Weighted average restricted stock awards that were not included in the diluted EPS calculations because they were anti-dilutive were 2,882 19,765, 13,614 2,882, and 76,654 13,614 for 2023, 2022, and 2021 and 2020 respectively. Performance share unit awards are not included within the calculation of diluted EPS as the performance criteria has not been met as of the year ended December 30, 2023.

The following table sets forth the computation of basic and diluted EPS:

(In thousands, except per share amounts)	2022 (52 Weeks)	2021 (52 Weeks)	2020 (53 Weeks)	2023	2022	2021
<b>Numerator:</b>						
Net earnings	\$ 34,518	\$ 73,751	\$ 75,914	\$ 52,237	\$ 34,518	\$ 73,751
Adjustment for earnings attributable to participating securities	(404)	(1,399)	(1,871)	(408)	(404)	(1,399)
Net earnings used in calculating earnings per share	\$ 34,114	\$ 72,352	\$ 74,043	\$ 51,829	\$ 34,114	\$ 72,352
<b>Denominator:</b>						
Weighted average shares outstanding, including participating securities	35,279	35,639	35,861	34,211	35,279	35,639
Adjustment for participating securities	(413)	(676)	(884)	(267)	(413)	(676)
Shares used in calculating basic earnings per share	34,866	34,963	34,977	33,944	34,866	34,963
Effect of dilutive stock warrant	847	225	—	584	847	225
Effect of dilutive restricted stock awards	187	79	1	106	187	79
Shares used in calculating diluted earnings per share	35,900	35,267	34,978	34,634	35,900	35,267
Basic earnings per share	\$ 0.98	\$ 2.07	\$ 2.12	\$ 1.53	\$ 0.98	\$ 2.07
Diluted earnings per share	\$ 0.95	\$ 2.05	\$ 2.12	\$ 1.50	\$ 0.95	\$ 2.05

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**Stock-Based Employee Compensation:** All share-based payments to associates Associates are generally recognized in the consolidated financial statements as compensation cost based on the fair value on the date of grant. The grant date closing price per share of SpartanNash stock is used to estimate the fair value of restricted stock awards and

restricted performance stock units. The value of the portion of awards expected to vest is recognized as expense over the requisite service period. Performance stock units require the Company to estimate expected achievement of performance targets over the performance period. This estimate involves judgment regarding future expectations of various financial performance measures. If there are changes in the Company's estimates of the level of financial performance measures expected to be achieved, the related stock-based compensation expense may be significantly increased or reduced in the period that the estimate changes.

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**Stock Warrants:** Stock warrants are accounted for as equity instruments and measured in accordance with ASC 718, *Compensation – Stock Compensation*. For awards granted to a customer which are not in exchange for distinct goods or services, the fair value of the awards earned based on service or performance conditions is recorded as a reduction of the transaction price, in accordance with ASC 606, *Revenue from Contracts with Customers*. To determine the fair value of the warrants in accordance with ASC 718, the Company uses pricing models based in part on assumptions for which management is required to use judgment. Based on the fair value of the awards, the Company determines the amount of warrant expense based on the customer's achievement of vesting conditions, which is recorded as a reduction of net sales on the consolidated statement of earnings. The dilutive impact of stock warrants is determined using the treasury stock method.

**Shareholders' Equity:** The Company's restated articles of incorporation provide that the Board of Directors may at any time, and from time to time, provide for the issuance of up to 10 million shares of preferred stock in one or more series, each with such designations as determined by the Board of Directors. At December 31, 2022, December 30, 2023 and January 1, 2022, there were no shares of preferred stock outstanding.

**Advertising Costs:** The Company's advertising costs are expensed as incurred and are included in Selling, general and administrative expenses. Advertising expenses were \$33.7 million, \$37.6 million and \$37.7 million in 2023, 2022 and 2021, respectively.

**36.6 Interest Rate Swaps:** The Company utilizes an interest rate swap contract to reduce its exposure to fluctuations in 2022, 2021 variable interest rates applicable to its credit facility. The Company values the interest rate swap using standard models and 2020, respectively, observable market inputs including SOFR interest rates and discount rates. The Company has designated its interest rate swap as a cash flow hedge. The change in the fair value of the interest rate swap is initially reported in "Other comprehensive (loss) income" in the consolidated statements of comprehensive income and subsequently reclassified to earnings in "Interest expense, net" in the consolidated statements of earnings when the hedged transactions affect earnings.

**Accumulated Other Comprehensive (Loss) Income (Loss) ("AOCI"):** The Company reports comprehensive income, (loss), which includes net earnings and other comprehensive income (loss). Other comprehensive (loss) income (loss) refers to expenses, gains and losses that are not included in net earnings, such as postretirement liability adjustments and changes in the fair value of interest rate swaps, but rather are recorded directly to shareholders' equity. These amounts are also presented in the consolidated statements of comprehensive income.

**Segment Change:** At the beginning of the third quarter of 2022, the Company determined that the previously disclosed Food Distribution and Military operating segments should be combined into a single operating segment, Wholesale. The change in operating segments was driven by both a change in the Company's organizational structure and a change in the reporting regularly provided to the Chief Operating Decision Maker ("CODM") to assess performance and allocate resources. The combination of the two segments reflects the way the Company manages the distribution business as one comprehensive distribution network and furthers the Company's efforts to streamline operations in connection with its supply chain transformation and better serve customers.

The change in the Company's organizational structure included the elimination of the Military segment manager role and the creation of the Chief Customer Officer position, which oversees relationships across the entire Wholesale portfolio, including independent retailers, national accounts and military. The Company also made changes to its supply chain structure to combine the reviews of performance and key metrics among the legacy Food Distribution and Military distribution centers.

The change in reporting to the CODM included the consolidation of the former Food Distribution and Military into one combined Wholesale segment, which allows the CODM to better assess performance and allocate resources across Wholesale commercial operations and the supply chain network. Accordingly, the Company's business now consists of two reportable segments: Wholesale and Retail. These reportable segments are two distinct businesses, each with a different customer base, management structure, and basis for determining budgets, forecasts, and compensation. Prior periods have been recast to reflect this change. Refer to Note 2 for information regarding the basis of organization and types of products, services and customers that the Company derives revenue from.

**Adoption of New Accounting Standards:** In June 2016, the FASB issued ASU 2016-13, *Measurement As of Credit Losses on Financial Instruments*. The ASU changed the impairment model December 30, 2023 and for most financial assets and certain other instruments. The standard requires entities to use a forward-looking "expected loss" model that replaces the previous "incurred loss" model, which generally results in the earlier recognition of credit losses.

The adoption of the standard resulted in a transition adjustment to 2020 beginning of the year retained earnings of \$2.2 million (gross of then ended, there were no recently adopted accounting standards that had a material impact on the deferred tax impact of \$0.6 million). The transition adjustment relates to incremental trade and notes receivable allowances due to Company's consolidated financial statements. There were no recently issued accounting standards not yet adopted which would have a material effect on the earlier recognition of expected losses under the new standard of \$1.9 million and \$0.3 million, respectively, Company's consolidated financial statements.

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## Note 2 – Revenue

### Sources of Revenue

SpartanNash is a distributor, wholesaler and retailer with a global supply chain network. SpartanNash's customers span a diverse group of national accounts, independent and chain grocers, e-commerce retailers, U.S. military commissaries and exchanges, and the Company's own brick-and-mortar grocery stores, pharmacies and fuel centers. SpartanNash distributes grocery and household goods, including fresh produce and its *Our Family*® portfolio of products, to locations in all 50 states.

The Company's main sources of revenue include the following:

*Customer Supply Agreements ("CSAs")* – The Company enters into CSAs (also known as Retail Sales and Service Agreements) with many of its retailer customers. These contracts obligate the Company to supply grocery and related products upon receipt of a purchase order from its customers. The contracts often specify minimum purchases a customer is required to make, in dollars or as a percentage of their total purchases, in order to earn certain rebates or incentives. In some cases, customers are required to repay advanced or loaned funds if they fail to meet purchase minimums or otherwise exit the supply agreement. Many of these contracts include various performance obligations other than providing grocery products, such as providing store resets, shelf tags, signage, or merchandising services. The Company has determined that these obligations are not material in the overall context of the contracts, and as such has not allocated transaction prices to these obligations. Revenue is recognized under these contracts when control of the product passes to the customer, which may happen before or after delivery depending upon specified shipping terms.

The Company's Wholesale customer base is diverse. Sales to one customer in the Wholesale segment represented 16%, 17 16%, and 17% of the Company's net sales for 2023, 2022 2021 and 2020, 2021, respectively. No other single customer exceeded 10% of the Company's net sales in any of the years presented.

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*Contracts with Manufacturers and Brokers to supply the Defense Commissary Agency ("DeCA") and Other Government Agencies* – DeCA operates a chain of commissaries on U.S. military installations. DeCA contracts with manufacturers to obtain grocery products for the commissary system. Manufacturers either deliver the products to the commissaries themselves or, more commonly, contract with distributors such as SpartanNash to provide products to the commissaries. Manufacturers must authorize the distributors as their official representatives to DeCA, and the distributors must adhere to DeCA's frequent delivery system procedures governing matters such as product identification, ordering and processing, information exchange and resolution of discrepancies. The Company obtains distribution contracts with manufacturers through competitive bidding processes and direct negotiations. As commissaries need to be restocked, DeCA identifies the manufacturer with which an order is to be placed, determines which distributor is the manufacturer's official representative for a particular commissary or exchange location, and then places a product order with that distributor under DeCA's master contract with the applicable manufacturer. The distributor selects that product from its existing inventory, delivers it to the commissary or port (in the case of overseas shipments) designated by DeCA, and bills the manufacturer for the product price plus a drayage fee that is typically based on a percentage of the purchase price, but may in some cases be based on a dollar amount per case or pound of product sold. The manufacturer then bills DeCA under the terms of its master contract. As control of the product passes to the customer upon delivery, revenue is recognized by SpartanNash at that time.

Revenue is recognized for the full amount paid by the vendor (for product and drayage) as the Company is a principal in the transaction and therefore recognizes revenue on a gross basis for these contracts. The definition of a principal in the transaction is centered on controlling goods before they are transferred to the customer. Key considerations supporting that SpartanNash controls the goods for these contracts prior to transfer to the customer include the following: (i) the Company has the ability to obtain substantially all of the remaining benefits from the assets by selling the goods and/or by pledging the related assets as collateral for borrowings; (ii) the Company is required to bear the risk of inventory loss prior to transfer to the customer; (iii) the Company has shared responsibilities in the fulfillment and acceptability of the goods; and (iv) to a lesser extent, the Company has some discretion in establishing the price for the goods sold to DeCA.

*Retail Sales* – The corporate owned corporate-owned retail stores recognize revenue at the time the customer takes possession of the goods. While there are no formal contracts related to these sales, they are within the scope of ASC 606. Customer returns are not material. The Company does not recognize a sale when it sells gift cards and gift certificates or a reduction of sales when it awards fuel discounts; rather, the impact to revenue is recognized when the customer redeems the fuel discounts, gift card or gift certificate to purchase product.

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	53 Weeks Ended January 2, 2021			2021		
	Wholesale	Retail	Total	Wholesale	Retail	Total
<b>Total</b>	6,349,753	2,581,286	8,931,039	6,845,236	2,797,864	9,643,100
<b>(In thousands)</b>						
<b>Type of products:</b>						
Center store (a)	2,562,487	1,097,013	3,659,500	2,419,163	1,001,920	3,421,083
Fresh (b)	2,161,446	1,013,657	3,175,103	2,027,020	992,897	3,019,917
Non-food (c)	1,876,775	419,507	2,296,282	1,783,229	427,872	2,211,101
Fuel	—	106,213	106,213	—	157,236	157,236
Other	109,860	1,527	111,387	120,341	1,361	121,702
<b>Total</b>	<b>6,710,568</b>	<b>2,637,917</b>	<b>9,348,485</b>	<b>6,349,753</b>	<b>2,581,286</b>	<b>8,931,039</b>
<b>Type of customers:</b>						
Individuals	—	2,636,993	2,636,993	—	2,580,277	2,580,277
Independent retailers (d)	2,253,940	—	2,253,940	2,197,892	—	2,197,892
National accounts	2,247,552	—	2,247,552	2,211,458	—	2,211,458
Military (e)	2,123,494	—	2,123,494	1,882,602	—	1,882,602
Other	85,582	924	86,506	57,801	1,009	58,810
<b>Total</b>	<b>6,710,568</b>	<b>2,637,917</b>	<b>9,348,485</b>	<b>6,349,753</b>	<b>2,581,286</b>	<b>8,931,039</b>
(a) Center store includes dry grocery, frozen and beverages.	(a) Center store includes dry grocery, frozen and beverages.	(a) Center store includes dry grocery, frozen and beverages.				
(b) Fresh includes produce, meat, dairy, deli, bakery, prepared proteins, seafood and floral.	(b) Fresh includes produce, meat, dairy, deli, bakery, prepared proteins, seafood and floral.	(b) Fresh includes produce, meat, dairy, deli, bakery, prepared proteins, seafood and floral.				
(c) Non-food includes general merchandise, health and beauty care, tobacco products and pharmacy.	(c) Non-food includes general merchandise, health and beauty care, tobacco products and pharmacy.	(c) Non-food includes general merchandise, health and beauty care, tobacco products and pharmacy.				
(d) Independent retailers include sales that were previously classified within the former Food Distribution segment to manufacturers, brokers and distributors.	(d) Independent retailers include sales to manufacturers, brokers and distributors.	(d) Independent retailers include sales to manufacturers, brokers and distributors.				
(e) Military represents the distribution of grocery products to U.S. military commissaries and exchanges, which primarily includes sales to manufacturers and brokers.	(e) Military represents the distribution of grocery products to U.S. military commissaries and exchanges, which primarily includes sales to manufacturers and brokers.	(e) Military represents the distribution of grocery products to U.S. military commissaries and exchanges, which primarily includes sales to manufacturers and brokers.				

### Contract Assets and Liabilities

Under its contracts with customers, the Company stands ready to deliver product upon receipt of a purchase order. Accordingly, the Company has no performance obligations under its contracts until its customers submit a purchase order. The Company does not receive pre-payment from its customers or enter into commitments to provide goods or services that have terms greater than one year. As the performance obligation is part of a contract that has an original expected duration of less than one year, the Company has applied the practical expedient under ASC 606 to omit disclosures regarding remaining performance obligations.

Revenue recognized from performance obligations related to prior periods (for example, due to changes in estimated rebates and incentives impacting the transaction price) was not material in any period presented.

For volume-based arrangements, the Company estimates the amount of the advanced funds earned by the retailers based on the expected volume of purchases by the retailer, and amortizes the advances as a reduction of the transaction price and revenue earned. These advances are not considered contract assets under ASC 606 as they are not generated through the transfer of goods or services to the retailers. These advances are included in Other assets, net within the consolidated balance sheets.

When the Company transfers goods or services to a customer, payment is due subject to normal terms and is not conditional on anything other than the passage of time. Typical payment terms range from "due upon receipt" to due within 30 days, depending on the customer. At contract inception, the Company expects that the period of time between the transfer of goods to the customer and when the customer pays for those goods will be less than one year, which is consistent with the Company's standard payment terms.

Accordingly, the Company has elected the practical expedient to not adjust for the effects of a significant financing component. As a result, these amounts are recorded as receivables and not contract assets. The Company had no contract assets for any period presented.

The Company does not typically incur incremental costs of obtaining a contract that are contingent upon successful contract execution and would therefore be capitalized.

### Concentration of Credit Risk

In the ordinary course of business, the Company may advance funds to certain independent retailers ("customer advances") which are earned by the retailers primarily through achieving specified purchase volume requirements, as outlined in their supply agreements with the Company. These customer advances must be repaid if the purchase volume requirements are not met. The collectability of customer advances is not assured.

In the ordinary course of business, the Company also subleases and assigns certain leases to third parties. As of **December 31, 2022** **December 30, 2023**, the Company estimates the present value of its maximum potential obligations for subleases and assigned leases to be approximately **\$4.5** **2.9** million and **\$6.9** **7.6** million, respectively.

The Company may also provide financial assistance in the form of loans to certain independent retailers for inventories, store fixtures and equipment and store improvements. Loans are generally secured by liens on real estate, inventory and/or equipment, personal guarantees and other types of collateral, and are generally repayable over a period of **five** **three** to ten years. The Company establishes reserves based upon assessments of the credit risk of specific customers, collateral value, historical trends and other information. The Company believes that adequate provision has been recorded for any uncollectable amounts. In addition, the Company may guarantee debt **and lease obligations** of independent retailers. In the event these retailers are unable to meet their debt service payments or otherwise experience an event of default, the Company would be unconditionally liable for the outstanding balance of their debt, **and lease obligations**, which would be due in accordance with the underlying agreements.

Changes to the balance of the allowance for credit losses were as follows:

(In thousands)	Allowance for Credit Losses			Allowance for Credit Losses		
	Current Accounts and Notes Receivable	Long-term Notes Receivable	Total	Current Accounts and Notes Receivable	Long-term Notes Receivable	Total
<b>Balance at December 28, 2019</b>	\$ 2,739	\$ 233	\$ 2,972			
Impact of adoption of new credit loss standard (ASU 2016-13)	1,911	259	2,170			
Provision for expected credit losses	1,966	—	1,966			
Write-offs charged against the allowance	(384)	(121)	(505)			
<b>Balance at January 2, 2021</b>	6,232	371	6,603	\$ 6,232	\$ 371	\$ 6,603
Changes in credit loss estimates	(1,101)	360	(741)	(1,101)	360	(741)
Write-offs charged against the allowance	(717)	—	(717)	(717)	—	(717)
<b>Balance at January 1, 2022</b>	4,414	731	5,145	4,414	731	5,145

Changes in credit loss estimates	2,539	217	2,756	2,539	217	2,756
Write-offs charged against the allowance	(855)	—	(85)	(855)	—	(85)
<b>Balance at December 31, 2022</b>	<b>\$ 6,098</b>	<b>\$ 948</b>	<b>\$ 7,046</b>	<b>6,098</b>	<b>948</b>	<b>7,046</b>
Changes in credit loss estimates				(929)	264	(665)
Write-offs charged against the allowance				(558)	—	(558)
<b>Balance at December 30, 2023</b>				<b>\$ 4,611</b>	<b>\$ 1,212</b>	<b>\$ 5,823</b>

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During 2023, 2022, 2021 and 2020, 2021, the Company recognized bad debt expense of \$1.1 0.3 million, \$0.4 1.1 million and \$0.7 0.4 million, respectively, related to direct write-offs of uncollectable amounts.

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### Note 3 – Property and Equipment

Property and equipment consist of the following:

(In thousands)	December 31, 2022	January 1, 2022	December 30, 2023	December 31, 2022
Land and improvements	\$ 91,859	\$ 92,416	\$ 91,031	\$ 91,859
Buildings and improvements	616,581	580,317	646,707	612,471
Equipment	773,410	714,680	799,721	724,077
Construction in progress			59,295	53,443
Total property and equipment	1,481,850	1,387,413	1,596,754	1,481,850
Less accumulated depreciation and amortization	871,630	810,054	947,683	871,630
Property and equipment, net	\$ 610,220	\$ 577,359	\$ 649,071	\$ 610,220

Depreciation expense was \$68.0 million, \$66.7 million and \$65.9 million in 2023, 2022 and \$64.7 million in 2022, 2021 and 2020 respectively.

### Note 4 – Goodwill and Other Intangible Assets

The Company has two reporting units, Wholesale and Retail. Changes in the carrying amount of goodwill were as follows:

(In thousands)	Wholesale	Retail	Total	Wholesale	Retail	Total
Balance at January 2, 2021 and January 1, 2022	\$ 181,035	\$ —	\$ 181,035			
Balance at January 1, 2022				\$ 181,035	\$ —	\$ 181,035
Acquisitions	—	1,125	1,125	—	1,125	1,125
Balance at December 31, 2022	\$ 181,035	\$ 1,125	\$ 182,160			
Balance at December 31, 2022 and December 30, 2023				\$ 181,035	\$ 1,125	\$ 182,160

The Company acquired goodwill within the Retail reporting unit of \$1.1 million related to an immaterial acquisition during the second quarter of 2022.

The Company reviews goodwill and other intangible assets for impairment annually, during the fourth quarter of each year, and more frequently if circumstances indicate impairment is more likely than not to have occurred. Following the change in the reportable segments in the third quarter of 2022, as disclosed in Note 1, the Company evaluated the reporting units within the Wholesale segment in accordance with ASC 350 *Intangibles - Goodwill and Other*. As a result of the evaluation, the Company concluded that there was a single reporting unit within the Wholesale segment. Due to the change in reporting units, the Company performed a test for impairment as of the beginning of the third quarter immediately

before and after the change. Testing goodwill and other intangible assets for impairment requires management to make significant estimates about the Company's future performance, cash flows, and other assumptions that can be affected by potential changes in economic, industry or market conditions, business operations, competition, or the Company's stock price and market capitalization.

During the Company's third quarter 2023 annual impairment review within the Wholesale reporting unit, projected cash flows were discounted based on a weighted average cost of capital ("WACC") of 9.6%. This WACC was developed from adjusted market-based and company specific factors, current interest rates, equity risk premiums, and other market-based expectations regarding expected investment returns. The development of the WACC requires estimates of an equity rate of return and a debt rate of return, which are specific to the industry in which the Wholesale reporting unit operates. The Company concluded that the fair values of both the previous Food Distribution reporting unit, as well as the current Wholesale reporting unit, were substantially in excess of their carrying values.

As the Company performed a quantitative assessment in the third quarter of the current year, the Company also performed a qualitative assessment in the fourth quarter of the current year. The Company assessed the qualitative factors during the fourth quarter assessment and concluded that the fair value of the Wholesale reporting unit was more likely than not substantially in excess of its carrying value. value in the annual review.

The following table reflects the components of amortized intangible assets, included in "Intangible assets, net" on the consolidated balance sheets:

(In thousands)	December 31, 2022		January 1, 2022	
	Gross		Gross	
	Carrying	Accumulated	Carrying	Accumulated
	Amount	Amortization	Amount	Amortization
Non-compete agreements	\$ 3,545	\$ 2,621	\$ 4,287	\$ 2,792
Pharmacy customer prescription lists	4,168	2,598	4,233	2,095
Customer relationships	57,937	22,484	57,937	18,822
Trade names	—	—	1,068	987
Franchise fees	1,165	598	1,110	605
Total	\$ 66,815	\$ 28,301	\$ 68,635	\$ 25,301

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(In thousands)	December 30, 2023		December 31, 2022	
	Gross		Gross	
	Carrying	Accumulated	Carrying	Accumulated
	Amount	Amortization	Amount	Amortization
Non-compete agreements	\$ 3,545	\$ 3,190	\$ 3,545	\$ 2,621
Pharmacy customer prescription lists	3,869	2,853	4,168	2,598
Customer relationships	57,937	26,146	57,937	22,484
Franchise fees	1,209	661	1,165	598
Total	\$ 66,560	\$ 32,850	\$ 66,815	\$ 28,301

The weighted average amortization periods for amortizable intangible assets as of December 31, 2022 December 30, 2023 are as follows:

Non-compete agreements	6.4 years	6.4 years
Pharmacy customer prescription lists	8.1 years	8.0 years
Customer relationships	16.4 years	16.4 years
Franchise fees	10.0 years	10.0 years

Amortization expense for intangible assets was \$4.9 million, \$5.0 million and \$5.2 million for 2023, 2022 and \$5.7 million for 2022, 2021, and 2020, respectively.

Estimated amortization expense for each of the five succeeding fiscal years is as follows:

(In thousands)	2023	2024	2025	2026	2027	2024	2025	2026	2027	2028
Amortization expense	\$ 4,828	\$ 4,576	\$ 4,180	\$ 3,665	\$ 3,660	\$ 4,587	\$ 4,190	\$ 3,675	\$ 3,653	\$ 3,645

The Company has indefinite-lived intangible assets that are not amortized, consisting primarily of indefinite-lived trade names and liquor licenses, totaling \$67.8 million and \$67.6 million as of December 31, 2022 both December 30, 2023 and January 1, 2022, respectively. During the third quarter of 2020, the Company made the decision to abandon a tradename within the Wholesale segment to better integrate with the Company's overall transportation operations, resulting in a \$7.0 million impairment of the associated indefinite-lived tradename asset. During the fourth quarter of 2020, the Company recognized an impairment charge of \$1.7 million, related to a tradename, based on a change in the assumptions supporting fair value.

**Note 5 – Restructuring, Asset Impairment and Other Charges December 31, 2022.**

The following table provides the activity of reserves for closed properties for 2022, 2021 and 2020. Reserves for closed properties recorded in the consolidated balance sheets are included in “Other accrued expenses” in Current liabilities and “Other long-term liabilities” in Long-term liabilities based on when the obligations are expected to be paid. -47-

(In thousands)	Lease and		
	Ancillary Costs	Severance	Total
<b>Balance at December 28, 2019</b>	\$ 4,971	\$ 17	\$ 4,988
Provision for closing charges	325	2,205	2,530
Changes in estimates	26	(228)	(202)
Accretion expense	121	—	121
Payments	(2,094)	(1,880)	(3,974)
<b>Balance at January 2, 2021</b>	<b>3,349</b>	<b>114</b>	<b>3,463</b>
Provision for closing charges	1,509	—	1,509
Provision for severance	—	362	362
Lease termination adjustments	(220)	—	(220)
Changes in estimates	2	—	2
Accretion expense	91	—	91
Payments	(1,607)	(476)	(2,083)
<b>Balance at January 1, 2022</b>	<b>3,124</b>	<b>—</b>	<b>3,124</b>
Provision for closing charges	1,837	—	1,837
Provision for severance	—	9	9
Lease termination adjustments	(86)	—	(86)
Changes in estimates	28	—	28
Accretion expense	67	—	67
Payments	(993)	(9)	(1,002)
<b>Balance at December 31, 2022</b>	<b>\$ 3,977</b>	<b>\$ -</b>	<b>\$ 3,977</b>

Included in the liability are lease-related ancillary costs from the date of site closure to the end of the remaining lease term.

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Restructuring, asset impairment and other charges included in the consolidated statements of earnings consisted of the following:

(In thousands)	2022	2021	2020
	(52 Weeks)	(52 Weeks)	(53 Weeks)
Asset impairment charges (a)	\$ 5,086	\$ 3,783	\$ 20,148
Provision for closing charges	1,837	1,509	325
Gain on sales of assets related to closed facilities (b)	(6,324)	(2,607)	(31)
Provision for severance (c)	9	362	2,205
Other costs associated with site closures (d)	271	636	1,953
Lease termination adjustments (e)	(102)	(799)	—
Changes in estimates (f)	28	2	(202)
<b>Total</b>	<b>\$ 805</b>	<b>\$ 2,886</b>	<b>\$ 24,398</b>

- (a) Asset impairment charges in the current year were incurred primarily in the Retail segment and relate to restructuring of the Retail segment's e-commerce delivery model and a current year store closure. Asset impairment charges in 2021 were incurred primarily in the Retail segment and relate to 2021 store closures and previously closed locations, as well as site closures in connection with the Company's supply chain transformation initiatives within the Wholesale segment. In 2020, asset impairment charges of \$9.1 million were incurred in the Wholesale segment related to the evaluation of the expected net proceeds from the Fresh Kitchen facility, the exit of the Fresh Cut business, and the sale of equipment related to both Fresh Cut and Fresh Kitchen. Charges of \$8.6 million primarily relate to the abandonment of a tradename related to the

integration of the Company's transportation operations. Additionally, certain of the Company's Retail assets were determined not to be recoverable based on management's intention to close stores or sell assets related to previously closed stores, resulting in impairment charges totaling \$2.1 million.

- (b) Gain on sales of assets in the current year primarily relates to the sales of real property of previously closed locations within both the Wholesale and Retail segments. In 2021, on sales of assets primarily relate to sales of pharmacy customer lists, equipment, and real estate associated with the store closings in the Retail segment, in addition to gains on sale of vacant land in the Wholesale segment.
- (c) Severance in 2021 relates to closures in the Wholesale segment as well as Retail store closings. In 2020, severance was related to the exit of the Fresh Cut business within the Wholesale segment.
- (d) Other costs associated with distribution center and store closings represent additional costs, including labor, inventory transfer and other administrative costs, incurred in connection with restructuring operations in the Wholesale and Retail segments.
- (e) Lease termination adjustments represent the benefits recognized in connection with early lease buyouts for previously closed sites. Payments made in connection with lease buyouts were applied to reserves for closed properties and lease liabilities, as applicable. In the current year, adjustments include the gain recognized to terminate a lease agreement, which includes a \$16 thousand write-off of the lease liability and \$86 thousand reduction of lease ancillary costs included in the reserve for closed properties. In 2021, adjustments include gains of \$0.8 million and \$0.2 million from write-offs of the lease liability and lease ancillary costs, offset by the cost of a \$0.2 million early termination fee.
- (f) Changes in estimates primarily relate to revised estimates for turnover and other lease ancillary costs associated with previously closed locations.

Indefinite lived intangible assets are tested for impairment at least annually, and as needed if an indicator of potential impairment exists. A qualitative assessment was performed to determine whether it is more likely than not that an indefinite lived intangible asset is impaired. If the qualitative assessment supports that it is more likely than not that the fair value of the indefinite lived intangible asset exceeds its carrying value, a quantitative impairment test is not required. If the qualitative assessment does not support the fair value of the indefinite lived intangible asset, then a quantitative assessment is performed. Indefinite lived intangible assets are measured at fair value using Level 3 inputs under the fair value hierarchy, as further described in Note 7. The fair value of indefinite lived intangible assets is determined by estimating the amount and timing of net future cash flows generated from the use of the asset, generally using estimated revenue growth rates and profitability rates and, in the case of the relief-from-royalty methodology, royalty rates. Future cash flows are discounted based on the WACC of the reporting unit in which the asset resides, determined using current interest rates, equity risk premiums, and other market-based expectations regarding expected investment returns, as well as estimates of industry-specific equity and debt rates of return. The Company concluded that it is more likely than not that the fair value of the indefinite lived intangible assets exceed their carrying value during the annual qualitative assessment.

#### Note 5 – Restructuring, Asset Impairment and Other Charges

The following table provides the activity of reserves for closed properties for 2023, 2022 and 2021. Reserves for closed properties recorded in the consolidated balance sheets are included in "Other accrued expenses" in Current liabilities and "Other long-term liabilities" in Long-term liabilities based on when the obligations are expected to be paid.

(In thousands)	Lease and		
	Ancillary Costs	Severance	Total
<b>Balance at January 2, 2021</b>	\$ 3,349	\$ 114	\$ 3,463
Provision for closing charges	1,509	—	1,509
Provision for severance	—	362	362
Lease termination adjustments	(220)	—	(220)
Changes in estimates	2	—	2
Accretion expense	91	—	91
Payments	(1,607)	(476)	(2,083)
<b>Balance at January 1, 2022</b>	3,124	—	3,124
Provision for closing charges	1,837	—	1,837
Provision for severance	—	9	9
Lease termination adjustments	(86)	—	(86)
Changes in estimates	28	—	28
Accretion expense	67	—	67
Payments	(993)	(9)	(1,002)
<b>Balance at December 31, 2022</b>	3,977	—	3,977
Provision for severance	—	21	21
Changes in estimates	(258)	—	(258)
Accretion expense	102	—	102
Payments	(844)	(21)	(865)
<b>Balance at December 30, 2023</b>	\$ 2,977	\$ —	\$ 2,977

Included in the liability are lease-related ancillary costs from the date of site closure to the end of the remaining lease term.

Restructuring, asset impairment and other charges included in the consolidated statements of earnings consisted of the following:

(In thousands)	2023	2022	2021
Asset impairment charges (a)	\$ 11,749	\$ 5,086	\$ 3,783
Provision for closing charges	—	1,837	1,509
Gain on sales of assets related to closed facilities (b)	(2,614)	(6,324)	(2,607)
Provision for severance (c)	21	9	362
Other costs associated with site closures (d)	584	271	636
Lease termination adjustments (e)	—	(102)	(799)
Changes in estimates (f)	(550)	28	2
Total	<u>\$ 9,190</u>	<u>\$ 805</u>	<u>\$ 2,886</u>

- (a) In the current year, asset impairment charges of \$8.0 million were incurred in the Wholesale segment related to the Company's continued supply chain network optimization in response to customer demand changes. Additional charges in the current year were incurred related to two store closures in the Retail segment and impairment losses related to a distribution location that sustained storm damage in the Wholesale segment. Asset impairment charges in 2022 were incurred primarily in the Retail segment and relate to restructuring of the Retail segment's e-commerce delivery model and a store closure. In 2021, asset impairment charges were incurred primarily in the Retail segment and relate to store closures, as well as site closures in connection with the Company's supply chain transformation initiatives within the Wholesale segment.
- (b) Gain on sales of assets in the current year primarily relate to the sale of a store within the Retail segment. In 2022, gain on sales of assets primarily relates to the sales of real property of previously closed locations within both the Wholesale and Retail segments. Gain on sales of assets in 2021 primarily relate to sales of pharmacy customer lists, equipment, and real estate associated with the store closings in the Retail segment, in addition to gains on sale of vacant land in the Wholesale segment.
- (c) Severance charges relate to closures in the Wholesale segment as well as Retail store closings.
- (d) Other costs net activity in the current year primarily relates to Retail store closings. In the prior year, activity primarily relates to restructuring activity within the Wholesale segment and Retail store closings.
- (e) Lease termination adjustments represent the benefits recognized in connection with early lease buyouts for previously closed sites. Payments made in connection with lease buyouts were applied to reserves for closed properties and lease liabilities, as applicable.
- (f) Changes in estimates primarily relate to revised estimates for turnover and other lease ancillary costs associated with previously closed locations. The current year also included a \$0.3 million gain for additional insurance proceeds received related to a distribution location that sustained significant storm damage within the Wholesale segment.

Long-lived assets which are not recoverable are measured at fair value on a nonrecurring basis using Level 3 inputs under the fair value hierarchy, as further described in Note 7. In the current year, long-lived assets with a book value of \$20.6 million were measured at a fair value of \$8.9 million, resulting in impairment charges of \$11.7 million. In the prior year, long-lived assets with a book value of \$5.2 million were measured at a fair value of \$0.1 million, resulting in impairment charges of \$5.1 million. In 2021, long-lived assets consisting of property and equipment with a book value of \$27.5 million were measured at a fair value of \$23.7 million, resulting in impairment charges of \$3.8 million. The fair value of long-lived assets is determined by estimating the amount and timing of net future cash flows, discounted using a risk-adjusted rate of interest. The Company estimates future cash flows based on historical results of operations, external factors expected to impact future performance, experience and knowledge of the geographic area in which the assets are located, and when necessary, consultations with real estate brokers.

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## Note 6 – Long-Term Debt

Long-term debt consists of the following:

(In thousands)	December 30, 2023	December 31, 2022
Senior secured revolving credit facility, due November 2027	\$ 522,492	\$ 445,880
Finance lease liabilities (Note 10)	74,639	57,515
Other, 3.71% - 4.36%, due 2024 - 2033	4,743	4,813
Total debt - Principal	601,874	508,208
Unamortized debt issuance costs	(4,394)	(4,627)
Total debt	597,480	503,581
Less current portion	8,813	6,789
Total long-term debt and finance lease liabilities	<u>\$ 588,667</u>	<u>\$ 496,792</u>

(In thousands)	December 31, 2022	January 1, 2022
Senior secured revolving credit facility, due November 2027	\$ 445,880	\$ 359,640
Finance lease liabilities (Note 9)	57,515	43,142

Other, 4.35% - 4.36%, due 2023 - 2026	4,813	5,617
Total debt - Principal	508,208	408,399
Unamortized debt issuance costs	(4,627)	(2,675)
Total debt	503,581	405,724
Less current portion	6,789	6,334
Total long-term debt and finance lease liabilities	<u>\$ 496,792</u>	<u>\$ 399,390</u>

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On November 17, 2022, SpartanNash and certain of its subsidiaries in 2023, the Company entered into an amendment amendments (the "Amendment" "Amendments") to the Company's Amended and Restated Loan and Security Agreement (the "Credit Agreement"). The principal terms of the Amendment Amendments included an extension increasing the size of the maturity date of the loans from December 18, 2023 to November 17, 2027, an amendment to the interest rate grid such that rates for the Tranche A portion of the Company's revolving loans, with a credit facility by \$975.130 million capacity, are now SOFR plus in 2023. The Credit Agreement provides for a Tranche A revolving loan of up to \$1.25 1.17% to SOFR plus 1.50% billion and a Tranche A-1 revolving loans, loan with a \$40 million capacity, are now SOFR plus 2.25% to SOFR plus 2.50%, and a reset of certain advance rates for the borrowing base. capacity. The Company has the ability to increase the amount borrowed under the Credit Agreement by an additional \$325.195 million, subject to certain conditions. The Company's obligations under the Credit Agreement are secured by substantially all of the Company's personal and real property. The Company may repay all loans in whole or in part at any time without penalty.

Availability under the Credit Agreement is based upon advance rates on certain asset categories owned by the Company, including, but not limited to the following: inventory, accounts receivable, real estate, prescription lists, cigarette tax stamps, and rolling stock.

The Credit Agreement imposes certain restrictions on the Company, including limitations on dividends and investments, limitations on the Company's ability to incur debt, make loans, acquire other companies, change the nature of the Company's business, enter a merger or consolidation, or sell assets. These requirements can be more restrictive depending upon the Company's Excess Availability, as defined under the Credit Agreement.

Borrowings under the credit facility bear interest at the Company's option as either SOFR loans or Base Rate loans, subject to a grid based upon Excess Availability. The interest rate terms for each of the aforementioned tranches are as follows:

Credit Facility	Outstanding as of	SOFR Rate	Base Rate
Tranche	(In thousands)		
Tranche A	\$ 409,719 485,379	SOFR plus 1.25% to 1.50%	Greater of: (i) the Federal Funds Rate plus 0.75% to 1.00% (ii) the SOFR Rate plus 1.25% to 1.50% (iii) the prime rate plus 0.25% to 0.50%
Tranche A-1	\$ 36,161 37,113	SOFR plus 2.25% to 2.50%	Greater of: (i) the Federal Funds Rate plus 1.75% to 2.00% (ii) the SOFR Rate plus 2.25% to 2.50% (iii) the prime rate plus 1.25% to 1.50%

The Company also incurs an unused line of credit fee on the unused portion of the loan commitments at a rate of 0.25%.

The Credit Agreement requires that the Company maintain Excess Availability of 10% of the borrowing base, as defined in the Credit Agreement. The Company is in compliance with all financial covenants as of December 31, 2022 December 30, 2023 and had Excess Availability after the 10% requirement of \$447.8 483.2 million and \$468.5 447.8 million at December 31, 2022 December 30, 2023 and January 1, 2022 December 31, 2022, respectively. The Credit Agreement provides for the issuance of letters of credit, of which \$17.7 million and \$16.1 million were outstanding as of December 31, 2022 December 30, 2023 and January 1, 2022, respectively. December 31, 2022.

The weighted average interest rate for all borrowings, including loan fee amortization, was 4.65 7.03% for 2022.2023. Refer to Note 8 for further information on the interest rate swap.

At December 31, 2022 December 30, 2023, aggregate annual maturities and scheduled payments of long-term debt are as follows:

(In thousands)	2023	2024	2025	2026	2027	Thereafter	Total
Total borrowings	\$ 6,789	\$ 6,905	\$ 6,507	\$ 7,717	\$ 451,052	\$ 29,238	\$ 508,208

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(In thousands)	2024	2025	2026	2027	2028	Thereafter	Total
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Total borrowings \$ 8,813 \$ 8,693 \$ 10,024 \$ 530,098 \$ 7,530 \$ 36,716 \$ 601,874

## Note 7 – Fair Value Measurements

ASC 820, *Fair Value Measurement*, prioritizes the inputs to valuation techniques used to measure fair value into the following hierarchy:

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability, reflecting the reporting entity's own assumptions about the assumptions that market participants would use in pricing.

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Financial instruments include cash and cash equivalents, accounts and notes receivable, accounts payable and long-term debt. The carrying amounts of cash and cash equivalents, accounts and notes receivable, and accounts payable approximate fair value because of the short-term maturities of these financial instruments. For discussion of the fair value measurements related to goodwill, and long-lived asset impairment charges, refer to Note 4 and Note 5. At December 31, 2022, December 30, 2023 and January 1, 2022, December 31, 2022, the book value and estimated fair value of the Company's debt instruments, excluding debt financing costs, were as follows:

(In thousands)	December 31, 2022	January 1, 2022	December 30, 2023	December 31, 2022
Book value of debt instruments, excluding debt financing costs:				
Current maturities of long-term debt and finance lease liabilities	\$ 6,789	\$ 6,334	\$ 8,813	\$ 6,789
Long-term debt and finance lease liabilities	501,419	402,065	593,061	501,419
Total book value of debt instruments	508,208	408,399	601,874	508,208
Fair value of debt instruments, excluding debt financing costs	507,668	414,667	603,117	507,668
(Deficit) excess of fair value over book value	\$ (540)	\$ 6,268		
Excess (deficit) of fair value over book value			\$ 1,243	\$ (540)

The estimated fair value of debt is based on market quotes for instruments with similar terms and remaining maturities (Level 2 inputs and valuation techniques).

The Company's interest rate swap agreement is considered a Level 2 instrument. The Company values the interest rate swap using standard models and observable market inputs including SOFR interest rates and discount rates, which are considered Level 2 inputs. The location and the fair value of the interest rate swap agreement in the consolidated balance sheets is disclosed in Note 8.

## Note 8 – Derivatives

### Hedging of Interest Rate Risk

During the first quarter of 2023, the Company entered into an interest rate swap contract to mitigate its exposure to changes in variable interest rates. The Company's interest rate swap is designated as a cash flow hedge as of both the effective date, March 17, 2023, and as of December 30, 2023. The interest rate swap is reflected at its fair value in the consolidated balance sheets. Refer to Note 7 for further information on the fair value of the interest rate swap.

Details of the pay-fixed, receive-floating interest rate swap contract as of December 30, 2023 are as follows:

Effective Date	Maturity Date	Notional Value (in millions)	Pay Fixed Rate	Receive Floating Rate	Floating Rate Reset Terms
March 17, 2023	November 17, 2027	\$150	3.646%	One-Month CME Term SOFR	Monthly

The Company performed an initial quantitative assessment of hedge effectiveness using the change-in-variable-cash-flows method. Under this method, the Company assessed the effectiveness of the hedging relationship by comparing the present value of the cumulative change in the expected future cash flows on the variable leg of the interest rate swap with the present value of the cumulative change in the expected future interest cash flows on the variable-rate debt. The Company determined the interest rate swap to be highly effective. To assess for continued hedge effectiveness, the Company performs a retrospective and prospective qualitative assessment each quarter. The Company also monitors the credit risk of the counterparty on an ongoing basis. The change in the fair value of the interest rate swap is initially reported in "Other comprehensive income" in the consolidated statements of comprehensive income and subsequently reclassified to earnings in "Interest expense, net" in the consolidated statements of earnings when the hedged transactions affect earnings.

The location and the fair value of the interest rate swap in the consolidated balance sheets as of December 30, 2023 is as follows:

Derivative Fair Value

(In thousands)	Consolidated Balance Sheets Location	December 30, 2023
<b>Cash Flow Hedge:</b>		
Interest rate swap	Prepaid expenses and other current assets	\$ 1,721
Interest rate swap	Other long-term liabilities	1,914
Interest rate swap	Accumulated other comprehensive income	(316)

The location and amount of gains or losses recognized in the consolidated statements of earnings for the interest rate swap, presented on a pre-tax basis, are as follows:

(In thousands)	2023
Total amounts of expense line items presented in the consolidated statements of earnings in which the effects of cash flow hedges are recorded	\$ 39,887
<b>Gain on cash flow hedging relationships:</b>	
Gain reclassified from comprehensive income into earnings	1,832

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### Note 9 – Commitments and Contingencies

The Company is engaged from time-to-time in routine legal proceedings incidental to its business. The Company does not believe that these routine legal proceedings, taken as a whole, will have a material impact on its business or financial condition. While the ultimate effect of such actions cannot be predicted with certainty, management believes that their outcome will not result in an adverse effect on the Company's consolidated financial position, operating results or liquidity.

The Company subleases property at certain locations and for 2023, 2022, 2021 and 2020, 2021, received rental income of \$3.9, 3.8 million, \$4.4, 3.9 million and \$4.0, 4.4 million, respectively. In the event of customer default, the Company would be responsible for fulfilling these lease obligations. Future payment obligations under these leases are disclosed in Note 9, 10. Contingencies related to credit risk and collectability are disclosed in Note 2.

Unions represent approximately 7% of SpartanNash's associates, Associates. These associates, Associates are covered by collective bargaining agreements ("CBAs"). The facilities covered by CBAs, the unions representing the covered associates, Associates and the expiration dates for each existing CBA are provided in the following table:

Distribution Center Locations	Union Locals	Expiration Dates
Landover, Maryland	IBT 639	February 2024
Lima, Ohio Warehouse	IBT 908	January 2025
Lima, Ohio Drivers	IBT 908	January 2025
Bellefontaine, Ohio GTL Truck Lines, Inc.	IBT 908	February 2025
Bellefontaine, Ohio General Merchandise Service Division	IBT 908	February 2025
Norfolk, Virginia	IBT 822	April 2025
Columbus, Georgia	IBT 528	September 2025
Grand Rapids, Michigan	IBT 406	April 2026

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#### Landover, Maryland

IBT 639

February 2027

The Company contributes to the Central States Southeast and Southwest Pension Fund (the "Central States Plan" or the "Plan"), a multi-employer pension plan, in accordance with provisions in place in collective bargaining agreements covering its supply chain operations in Bellefontaine and Lima, Ohio and Grand Rapids, Michigan. This Plan provides retirement benefits to participants based on their service to contributing employers. The benefits to participants under the Plan are paid from assets held in trust for that purpose. An equal number of Trustees are appointed by a combination of contributing employers on one hand and by the applicable union(s) on the other hand; however, no representative of SpartanNash is currently serving as a trustee of the Plan. The trustees are responsible for determining the level of benefits to be provided to participants, as well as for such matters as the investment of the assets held in trust and the overall administration of the plan. The Central States Plan implemented a rehabilitation plan on March 25, 2008.

The Company's contributions to the Central States Plan are established by each applicable collective bargaining agreement and vary by location. However, required contributions may increase based on the funded status of the Plan and legal requirements.

On March 31, 2022 January 12, 2023, the Central States Plan received approximately \$35.8 billion in Special Financial Assistance ("SFA"), inclusive of interest, which is designed to alleviate the risk of insolvency of the Plan. On March 31, 2023, in accordance with the Pension Protection Act ("PPA"), the plan actuary certified that the Plan was considered to be in "critical and declining" "critical" zone status for the plan year beginning January 1, 2022 January 1, 2023. Among other factors, plans in Due to the "critical and declining" zone are generally less than 65% funded and are projected to become insolvent within receipt of the next 15 years (or 20 years depending on the ratio of active-to-inactive participants). On March 10, 2021, the United States Congress passed the American Rescue Plan Act of 2021 (the "Act"), which provides financial relief to certain failing multiemployer pension plans. In accordance with the interim guidance issued by the Pension Benefit Guaranty Corporation ("PBGC") on July 9, 2021, the Act is designed to prevent such plans from becoming insolvent for the next 30 years. On December 8, 2022, the PBGC approved SFA, the Central States Pension Fund's application for Special Financial Assistance ("SFA") in accordance with the Act. The PBGC reported Plan has stated that it has approved approximately \$35.8 billion in SFA, inclusive of interest, and expects it "will be funded well into the Plan received future". Despite the funds on January 12, 2023. The SFA is designed to alleviate the risk of insolvency expectations of the Plan, and the Plan is expected to reach full funding over time. Company views the Plan's solvency as an ongoing risk factor.

The risk of participating in a multi-employer pension plan is different from the risk associated with single-employer plans in the following respects:

- a. Assets contributed to the multi-employer plan by one employer may be used to provide benefits to employees of other participating employers.
- b. If a participating employer stops contributing to the plan, the unfunded obligations of the plan may be borne by the remaining participating employers.
- c. If a company chooses to stop participating in a multi-employer plan, makes market exits such as closing a distribution center without opening another one in the same locale otherwise has participation in the plan drop below certain levels, the company may be required to pay those plans an amount based on the underfunded status of the plan, referred to as a withdrawal liability.

Based on the most recent information available to the Company, management believes that with the SFA received as part of the Act, the value of assets held in trust to pay benefits covers the present value of actuarial accrued liabilities in the Central States Plan. Except with respect to the approved SFA, management Management is not aware of any significant change in funding levels in the Plan since December 31, 2022 December 30, 2023. Due to uncertainty regarding future factors that could trigger a withdrawal liability, as well as the absence of specific information regarding matters such as the Plan's current financial situations, we are unable to determine with certainty the current amount of the Plan's funding and/or SpartanNash's current potential withdrawal liability exposure in the event of a future withdrawal from the Plan. Any adjustment for withdrawal liability would be recorded when it is probable that a liability exists and can be reasonably determined.

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#### Note 9 10 – Leases

A portion of the Company's retail stores and warehouses operate in leased facilities. The Company also leases the majority of the tractors and trailers within its fleet and certain other assets. Most of the property leases contain multiple renewal options, which generally range from one to ten years in length. In those locations in which it is economically feasible to continue to operate, management expects that renewal options will be exercised as they come due. The terms of certain leases contain provisions requiring payment of variable rent based on sales and payment of executory costs such as property taxes, utilities, insurance, maintenance and other occupancy costs applicable to the leased premises or, in the case of transportation equipment, provisions requiring payment of variable rent based upon miles driven. Certain properties or portions thereof are subleased to others. As most of the Company's leases do not reference an implicit discount rate, the Company uses an incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments.

The components of lease cost were as follows:

(In thousands)	2022	2021	2020			
	(52 Weeks)	(52 Weeks)	(53 Weeks)	2023	2022	2021
	5	5	5			
	7	8	5			
Operating lease cost	\$ 8	\$ 4	\$ 9	\$	\$	\$
	7	1	5			
	6	0	5	55,807	57,876	58,410
Short-term lease cost	7	8	8			
	5	4	6			
	7	6	9			
	6	9	8	8,367	7,576	8,469

Finance lease cost								
		6,	4,	4,				
Amortization of assets	Amortization of assets	1	6	0	Amortization of assets	8,244	6,134	4,645
		3	4	4				
		4	5	5				
Interest on lease liabilities	Interest on lease liabilities	3,	3,	3,	Interest on lease liabilities	4,454	3,369	3,005
		3	0	1				
		6	0	9				
		9	5	4				
Variable rent		2	1	3				
		3	6	3				
		6	2	3		348	236	162
Sublease income		(3	(4	(3				
		,9	,3	,9				
		0	5	9				
		7)	6)	4)		(3,845)	(3,907)	(4,356)
		7	7	6				
Total net lease cost		1,	0,	8,				
		\$ 2	\$ 3	\$ 2		\$	\$	\$
		8	3	3				
		4	5	1		73,375	71,284	70,335

Supplemental balance sheet information related to leases was as follows:

(In thousands)	December 31,		January 1,	
	2022		2022	
<b>Operating leases:</b>				
Operating lease assets	\$	257,047	\$	283,040
Current portion of operating lease liabilities	\$	45,453	\$	47,845
Noncurrent operating lease liabilities		239,062		266,701
Total operating lease liabilities	\$	284,515	\$	314,546
<b>Finance leases:</b>				
Property and equipment, at cost	\$	73,739	\$	56,591
Accumulated amortization		(21,727)		(18,707)
Property and equipment, net	\$	52,012	\$	37,884
Current portion of finance lease liabilities	\$	5,791	\$	5,359
Noncurrent finance lease liabilities		51,724		37,783
Total finance lease liabilities	\$	57,515	\$	43,142
<b>Weighted average remaining lease term (in years):</b>				
Operating leases		7.5		7.8
Finance leases		9.6		10.2
<b>Weighted average discount rate:</b>				
Operating leases		5.4%		5.2%
Finance leases		6.9%		7.1%

(In thousands)	2023	2022
<b>Operating leases:</b>		
Operating lease assets	\$ 242,146	\$ 257,047
Current portion of operating lease liabilities	\$ 41,979	\$ 45,453
Noncurrent operating lease liabilities	226,118	239,062
Total operating lease liabilities	<u>\$ 268,097</u>	<u>\$ 284,515</u>
<b>Finance leases:</b>		
Property and equipment, at cost	\$ 92,598	\$ 73,739
Accumulated amortization	(25,472)	(21,727)
Property and equipment, net	<u>\$ 67,126</u>	<u>\$ 52,012</u>
Current portion of finance lease liabilities	\$ 7,739	\$ 5,791
Noncurrent finance lease liabilities	66,900	51,724
Total finance lease liabilities	<u>\$ 74,639</u>	<u>\$ 57,515</u>
<b>Weighted average remaining lease term (in years):</b>		
Operating leases	7.6	7.5
Finance leases	9.0	9.6
<b>Weighted average discount rate:</b>		
Operating leases	5.9%	5.4%
Finance leases	6.8%	6.9%

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

(In thousands)	2022	2021	2020	2023	2022	2021
<b>Cash paid for amounts included in the measurement of lease liabilities:</b>						
Operating cash flows used for operating leases	61	62	60	\$ 58,251	\$ 61,103	\$ 62,590
Operating cash flows used for finance leases	3	3	1	4,450	3,372	3,005
<b>Cash paid for amounts included in the measurement of lease liabilities:</b>						
Operating cash flows used for operating leases	61	62	60	\$ 58,251	\$ 61,103	\$ 62,590
Operating cash flows used for finance leases	3	3	1	4,450	3,372	3,005

Financing cash flows used for finance leases	Financing cash flows used for finance leases	6	4	4					
		,	,	,	Financing cash flows used for finance leases				
		0	7	0					
		4	3	7					
		5	8	5			6,897	6,045	4,738
Lease assets obtained in exchange for lease liabilities:	Lease assets obtained in exchange for lease liabilities:				Lease assets obtained in exchange for lease liabilities:				
		2	3	6					
Total operating lease liabilities	Total operating lease liabilities	3	6	2	Total operating lease liabilities				
		,	,	,					
		0	8	5					
		2	6	0					
		7	7	0			39,018	23,027	36,867
		2							
Total finance lease liabilities	Total finance lease liabilities	1	4	3	Total finance lease liabilities				
		,	,	,					
		0	2	6					
		3	3	0					
		2	8	2			17,833	21,032	4,238

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The Company's total future lease commitments under operating and finance leases in effect at **December 31, 2022** **December 30, 2023** are as follows:

(In thousands)		Operating Leases	Finance Leases	Total	December 31, 2022		December 30, 2023	
					Operating Leases	Finance Leases	Operating Leases	Finance Leases
		5	9	6				
		9,	,	8,				
		\$ 3	\$ 4	\$ 8				
		6	9	5				
2023		3	4	7				
		5	9	6				
		2,	,	1,				
		6	1	7		\$	\$	\$
		6	2	8				
2024	2024	0	8	8	2024	56,296	12,487	68,783
		4	8	5				
		8,	,	7,				
		9	8	8				
		9	2	2				
2025	2025	7	6	3	2025	53,105	12,186	65,291

		4	8	5				
		2,	,	1,				
		9	1	1				
		9	0	0				
2026	2026	9	7	6	2026	46,824	11,467	58,291
		3	7	4				
		7,	,	5,				
		7	3	0				
		2	4	7				
2027	2027	6	5	1	2027	41,147	10,683	51,830
2028					2028	31,593	10,086	41,679
		1	3	1				
		0	5	4				
		9,	,	4,				
		0	5	5				
Thereaft	Thereaft	1	3	5				
er	er	2	9	1	Thereafter	108,062	42,671	150,733
		3	7	4				
		5	8	2				
		0,	,	9,				
		7	4	1				
		5	3	9				
Total	Total	7	9	6	Total	337,027	99,580	436,607
			2					
		6	0	8				
		6,	,	7,				
		2	9	1				
Less	Less	4	2	6				
interest	interest	2	4	6	Less interest	68,930	24,941	93,871
		2	5	3				
Present	Present	8	7	4				
value of	value of	4,	,	2,				
lease	lease	5	5	0				
liabilitie	liabilitie	1	1	3				
s	s	5	5	0	Present value of lease liabilities	268,097	74,639	342,736
		4	5	5				
		5,	,	1,				
Less	Less	4	7	2				
current	current	5	9	4				
portion	portion	3	1	4	Less current portion	41,979	7,739	49,718
		2	5	2				
Long-	Long-	3	1	9				
term	term	\$ 9,	\$ ,	\$ 0,				
lease	lease	0	7	7				
liabilitie	liabilitie	6	2	8				
s	s	2	4	6	Long-term lease liabilities	226,118	66,900	293,018

Certain retail store facilities, either owned or obtained through leasing arrangements, are leased to others. A majority of the leases provide for minimum rent obligations and contain renewal options. Certain of the leases contain escalation clauses and contingent rentals based upon stipulated sales volumes.

Owned assets, included in property and equipment, which are leased to others are as follows:

	December 31,	January 1,		December 30,	December 31,

(In thousands)	2022			2023		2022	
	2022	2022		2023	2022		
Land and improvements	7	8	Land and improvements				
	\$ 1	\$ 6		\$	\$		
	5	8					
	4	1			7,147		7,154
	2	4					
	6	0					
Buildings			Buildings				
	6	9					
	2	0					
	3	0			27,227		26,623
	3	4					
Owned assets leased to others	3	9	Owned assets leased to others				
	7	5					
	7	8					
	7	1			34,374		33,777
Less accumulated amortization and depreciation	1	1	Less accumulated amortization and depreciation				
	1	5					
	4	9					
	7	4					
	3	4			12,369		11,473
	2	3					
Net owned assets leased to others	2	3	Net owned assets leased to others				
	\$ 3	\$ 6		\$	\$		
	0	3					
	4	7			22,005		22,304

Future minimum rentals to be received under leases in effect at **December 31, 2022** December 30, 2023 are as follows:

(In thousands)	2023	2024	2025	2026	2027	Thereafter		2024	2025	2026	2027	2028	Thereafter	Total
						1	3							
Owned property	4	3	2	2	2	6	2							
	\$ 8	\$ 9	\$ 8	\$ 5	\$ 1	\$ 1	\$ 4	\$	\$	\$	\$	\$	\$	\$
	4	2	1	5	8	1	3							
	8	7	5	4	2	1	7	4,250	3,279	3,033	2,653	2,417	14,083	29,715
Leased property	3	3	2	1			1							
	8	0	1	2	7	5	5							
	0	5	5	8	3	2	5							
	3	1	9	0	7	1	1	3,297	2,389	1,422	857	198	15	8,178
	8	6	4	3	2	6	3							
Total	\$ 6	\$ 9	\$ 9	\$ 8	\$ 9	\$ 6	\$ 9	\$	\$	\$	\$	\$	\$	\$
	5	7	7	3	1	3	8							
	1	8	4	4	9	2	8	7,547	5,668	4,455	3,510	2,615	14,098	37,893

**Note 10 11 – Associate Retirement Plans**

The Company provides salary deferral defined contribution plans to substantially all of the Company's associates Associates not covered by CBAs. Associates covered by CBAs at the Company's Columbus, Georgia; Norfolk, Virginia; and Landover, Maryland facilities all participate in a defined contribution plan; the remaining associates Associates covered under CBAs participate in a multi-employer pension plan. The Company's former non-contributory pension plan has been terminated.

**Defined Contribution Plans**

Expense for employer matching contributions made to defined contribution plans totaled \$12.0 million, \$11.8 12.0 million and \$12.2 11.8 million in 2023, 2022 and 2021, and 2020, respectively.

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**Executive Compensation Plans**

The Company has a deferred compensation plan for a select group of management personnel or highly compensated associates Associates. The plan is unfunded and permits participants to defer receipt of a portion of their base salary, annual bonus, or long-term incentive compensation which would otherwise be paid to them. The deferred amounts, plus earnings, are distributed following the associate's Associate's termination of employment. Earnings are based on the performance of hypothetical investments elected by the participant from a portfolio of investment options.

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4.4 million and \$4.3 million at December 31, 2022 and January 1, 2022, respectively, is recorded in "Other assets, net" in the consolidated balance sheets.

These policies have an aggregate amount of life insurance coverage of approximately \$15.0 million.

**Defined Benefit Plans**

On February 28, 2018, the Company's Board of Directors granted approval to proceed with terminating the SpartanNash Company Pension Plan (the "Pension Plan"), a frozen defined benefit pension plan. The Pension Plan was terminated on July 31, 2018 and the distribution of assets to plan participants occurred in 2019. In 2020, the Company realized gains of \$1.2 million related to refunds from the annuity provider to the Pension Plan associated with the final reconciliation of participant data. The remaining plan asset balance of \$2.7 million was used to fund employer match liabilities associated with defined contribution plans in 2021.

**Postretirement Medical Plans**

SpartanNash Company and certain subsidiaries provide healthcare benefits to retired associates Associates under the SpartanNash Company Retiree Medical Plan (the "Retiree Medical Plan" or "Plan"). Former Spartan Stores, Inc. associates Associates hired prior to January 1, 2002 who were not covered by CBAs during their employment, who have at least 10 years of service and have attained age 55 upon retirement qualify as "covered associates." Covered associates who retired prior to March 31, 1992 receive Medicare supplemental benefits. Covered associates retiring after April 1, 1992 are eligible for monthly postretirement healthcare benefits of \$5 multiplied by the associate's years of service. This benefit is provided in the form of a credit against their monthly insurance premium or Medicare supplemental insurance. The retiree is responsible to pay the balance of the premium.

Effective June 30, 2022, the Company has amended the Retiree Medical Plan. In connection with the amendment, the Company will make lump sum cash payments to all active and retired participants in lieu of future monthly benefits and reimbursements previously offered under the Plan. As a result of the amendment effective June 30, 2022, the Plan obligation was remeasured, resulting in a reduction to the obligation of \$6.6 million and a corresponding prior service credit in AOCI, which will be amortized to net periodic postretirement benefit income over the remaining period until the final payment on July 1, 2024.

On July 1, 2023 and July 1, 2022, the Company made lump sum payments to retired participants totaling \$1.3 million and \$2.0 million, million, respectively. The payments constituted a partial settlement settlements of the Plan, which resulted in the recognition within net periodic postretirement expense of \$0.3 million and \$0.7 million on July 1, 2023 and July 1, 2022, respectively, related to the net actuarial loss within AOCI. The remaining payments payment, which relate relates to active participants, are is expected to be made in two equal installments on or about July 1, 2023, and July 1, 2024.

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The following tables set forth the actuarial present value of benefit obligations, funded status, changes in benefit obligations and plan assets, weighted average assumptions used in actuarial calculations and components of net periodic benefit costs for the Company's significant pension and postretirement benefit plans, excluding multi-employer plans. The prepaid, current accrued, and noncurrent accrued benefit costs associated with pension and postretirement benefits are reported in "Prepaid expenses and other current assets," "Other assets, net," "Accrued payroll and benefits," and "Other long-term liabilities," respectively, in the consolidated balance sheets.

Pension Plan

Retiree Medical Plan

	December 31,		January 1,		December 31,		January 1,	
(In thousands, except percentages)	2022		2022		2022		2022	
<b>Funded Status</b>								
<b>Projected/Accumulated benefit obligation:</b>								
Balance at beginning of year	\$	—	\$	—	\$	11,031	\$	11,909
Service cost		—		—		76		187
Interest cost		—		—		185		226
Actuarial loss (gain)		—		—		30		(849)
Plan amendment		—		—		(6,614)		—
Benefits paid		—		—		(2,296)		(442)
Balance at end of year	\$	—	\$	—	\$	2,412	\$	11,031
<b>Fair value of plan assets:</b>								
Balance at beginning of year	\$	—	\$	2,689	\$	—	\$	—
Company contributions		—		—		2,296		442
Excess asset transfer		—		(2,689)		—		—
Benefits paid		—		—		(2,296)		(442)
Balance at end of year	\$	—	\$	—	\$	—	\$	—
Unfunded status	\$	—	\$	—	\$	(2,412)	\$	(11,031)
<b>Components of net amount recognized in consolidated balance sheets:</b>								
Current liabilities	\$	—	\$	—	\$	(1,270)	\$	(496)
Noncurrent liabilities		—		—		(1,142)		(10,535)
Net liability	\$	—	\$	—	\$	(2,412)	\$	(11,031)
<b>Amounts recognized in AOCI:</b>								
Net actuarial loss	\$	—	\$	—	\$	743	\$	1,653
Prior service credit		—		—		(4,960)		—
Accumulated other comprehensive (income) loss	\$	—	\$	—	\$	(4,217)	\$	1,653
<b>Weighted average assumptions at measurement date:</b>								
Discount rate		N/A		N/A		5.34%		2.90%
Ultimate health care cost trend rate		N/A		N/A		N/A		4.50%
	<b>Pension Plan</b>			<b>Retiree Medical Plan</b>				
(In thousands, except percentages)	2022	2021	2020	2022	2021	2020		
<b>Components of net periodic benefit (income) cost:</b>								
Service cost	\$	—	\$	—	\$	76	\$	187
Interest cost		—		—		185		226
Amortization of prior service credit		—		—		(1,653)		—
Gain on reconciliation with annuity provider		—		(1,193)		—		—
Recognized actuarial net loss		—		—		200		230
Net periodic benefit (income) expense	\$	—	\$	(1,193)	\$	(1,192)	\$	643
Settlement expense		—		—		740		—
Total net periodic benefit (income) cost	\$	—	\$	(1,193)	\$	(452)	\$	643
<b>Weighted average assumptions used to determine net periodic benefit (income) cost:</b>								
Discount rate		N/A		N/A		2.90%		2.57%
				N/A				3.26%

**Retiree Medical Plan**

<u>(In thousands, except percentages)</u>	December 30, 2023	December 31, 2022
<b>Funded Status</b>		
<b>Projected/Accumulated benefit obligation:</b>		
Balance at beginning of year	\$ 2,412	\$ 11,031
Service cost	—	76
Interest cost	85	185
Actuarial loss	23	30
Plan amendment	—	(6,614)
Benefits paid	(1,284)	(2,296)
Balance at end of year	<u>\$ 1,236</u>	<u>\$ 2,412</u>
<b>Fair value of plan assets:</b>		
Balance at beginning of year	\$ —	\$ —
Company contributions	1,284	2,296
Benefits paid	(1,284)	(2,296)
Balance at end of year	<u>\$ —</u>	<u>\$ —</u>
Unfunded status	<u>\$ (1,236)</u>	<u>\$ (2,412)</u>
<b>Components of net amount recognized in consolidated balance sheets:</b>		
Current liabilities	\$ (1,236)	\$ (1,270)
Noncurrent liabilities	—	(1,142)
Net liability	<u>\$ (1,236)</u>	<u>\$ (2,412)</u>
<b>Amounts recognized in AOCI:</b>		
Net actuarial loss	\$ 217	\$ 743
Prior service credit	(1,653)	(4,960)
Accumulated other comprehensive income	<u>\$ (1,436)</u>	<u>\$ (4,217)</u>
<b>Weighted average assumptions at measurement date:</b>		
Discount rate	5.65 %	5.34 %
Ultimate health care cost trend rate	N/A	N/A

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<u>(In thousands, except percentages)</u>	Retiree Medical Plan		
	2023	2022	2021
<b>Components of net periodic benefit (income) cost:</b>			
Service cost	\$ —	\$ 76	\$ 187
Interest cost	85	185	226
Amortization of prior service credit	(3,307)	(1,653)	—
Recognized actuarial net loss	249	200	230
Net periodic benefit (income) expense	<u>\$ (2,973)</u>	<u>\$ (1,192)</u>	<u>\$ 643</u>
Settlement expense	299	740	—

Total net periodic benefit (income) cost	\$ (2,674)	\$ (452)	\$ 643
<b>Weighted average assumptions used to determine net periodic benefit (income) cost:</b>			
Discount rate	5.62%	2.90%	2.57%

Assumed healthcare cost trend rates have a significant effect on the amounts reported for the Retiree Medical Plan. Assumed current healthcare cost trend rates used to determine net periodic benefit cost were as follows:

	2022	2021	2020
Post-65	N/A	7.00%	7.50%
	2023	2022	2021
Post-65	N/A	N/A	7.00%

The following estimated Company expects to make post-retirement medical benefit payments are expected of \$1.3 million in 2024. The Company is not currently expecting to be paid in the following fiscal years: make any future post-retirement medical benefit payments after 2024.

(In thousands)	2023	2024
Post-retirement medical benefits	\$ 1,270	\$ 1,270

#### Multi-Employer Health and Welfare Plans

In addition to the plans described above, the Company participates in the Michigan Conference of Teamsters and Ohio Conference of Teamsters Health and Welfare plans. The Company contributes to these multi-employer health and welfare plans under the terms contained in existing CBAs, including the requisite contribution amounts set forth within such CBAs. The health and welfare plans provide medical, dental, pharmacy, vision, and other ancillary benefits to active associates Associates and retirees, as determined under the terms of the plan. Although the plans may provide certain benefits to retired employees, the Company's only contribution obligation is to make contributions in amounts tied to the hours worked by its active employees. As a result, the plan does not constitute a postretirement benefit plan of the Company. Because the plans aggregate contributions from multiple employers, the Company is unable to determine how much of its contributions are allocated to benefits paid to its active employees and those, if any, that are allocated to benefits paid to other employer's active employees and/or postretirement benefits. These types of plans often have a significant surplus of funds held in reserve in excess of claims incurred, and there is no potential withdrawal liability related to the Company's participation in the plans. With respect to the Company's participation in these plans, expense is recognized as contributions are made. The Company contributed \$13.4 17.0 million, \$13.2 13.4 million and \$13.7 13.2 million to these plans in 2023, 2022 2021 and 2020, 2021, respectively.

#### Multi-Employer Pension Plan

The Company also contributes to the Central States Plan, a multi-employer plan defined previously, under the terms of CBAs that cover its union-represented associates. Associates, including the requisite contribution amounts set forth within such CBAs. The Company is party to four CBAs that require contributions to the Central States Plan with expiration dates ranging from February 2024 January 2025 to April 2026. These CBAs cover warehouse personnel and drivers in Grand Rapids, Michigan and Bellefontaine and Lima, Ohio. With respect to the Company's participation in the Central States Plan (EIN 36-60442343 / Pension Plan Number 001), expense is recognized as contributions are made to the Central States Plan. The Company contributed \$12.3 13.1 million, \$13.5 12.3 million and \$14.1 13.5 million to the Central States Plan in 2023, 2022 2021 and 2020, 2021, respectively. The contributions made by the Company represent less than five percent of the Plan's total contributions in 2022, 2023.

Refer to Note 8, 9, for further information regarding the Company's participation in the Central States Plan. As of the date the consolidated financial statements were issued, an annual report for the Central States Plan on IRS Form 5500 was not publicly available for the plan year ended December 31, 2022 December 31, 2023.

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#### Note 11 12 – Accumulated Other Comprehensive Income or Loss ("AOCI")

AOCI represents the cumulative balance of other comprehensive income (loss), net of tax, as of the end of the reporting period. For the Company, the activity relates to postretirement benefit plans and an interest rate swap, including those described in Note 10. Notes 11 and 8, respectively.

Changes in AOCI are as follows:

	2022	2021	2020			
	(52 Weeks)	(52 Weeks)	(53 Weeks)	2023	2022	2021
(In thousands)						
Postretirement benefit plans:						

Balance at beginning of the year, net of tax	\$ (1,455)	\$ (2,276)	\$ (1,600)	\$ 2,979	\$ (1,455)	\$ (2,276)
Other comprehensive income (loss) before reclassifications	6,576	837	(1,086)			
Income tax (expense) benefit	(1,614)	(203)	268			
Other comprehensive income (loss), net of tax, before reclassifications	4,962	634	(818)			
Amortization of amounts included in net periodic benefit (income) cost (a)	(701)	250	191			
Other comprehensive income before reclassifications				203	6,576	837
Income tax expense				(51)	(1,614)	(203)
Other comprehensive income, net of tax, before reclassifications				152	4,962	634
Reclassification into net earnings (a)				(2,677)	(701)	250
Income tax benefit (expense) (b)	173	(63)	(49)	658	173	(63)
Amounts reclassified out of AOCI, net of tax	(528)	187	142	(2,019)	(528)	187
Other comprehensive income (loss), net of tax	4,434	821	(676)			
Other comprehensive (loss) income, net of tax				(1,867)	4,434	821
Balance at end of the year, net of tax	\$ 2,979	\$ (1,455)	\$ (2,276)	\$ 1,112	\$ 2,979	\$ (1,455)
<b>Interest rate swap:</b>						
Balance at beginning of the year, net of tax				\$ —	\$ —	\$ —
Other comprehensive income before reclassifications				1,419	—	—
Income tax expense				(332)	—	—
Other comprehensive income, net of tax, before reclassifications				1,087	—	—
Reclassification into net earnings (c)				(1,832)	—	—
Income tax benefit (b)				429	—	—
Amounts reclassified out of AOCI, net of tax				(1,403)	—	—
Other comprehensive loss, net of tax				(316)	—	—
Balance at end of the year, net of tax				\$ (316)	\$ —	\$ —
Total accumulated other comprehensive income (loss)				\$ 796	\$ 2,979	\$ (1,455)

- (a) Reclassified from AOCI into Other, net, or Selling, general and administrative expense. Amounts include amortization of net actuarial loss, amortization of prior service credit, and settlement expense totaling \$0.4 million and \$0.7 million in 2023 and 2022, and \$0.1 million in 2020, respectively. There was no settlement expense in 2021.
- (b) Reclassified from AOCI into Income tax expense (benefit).
- (c) Reclassified from AOCI into Interest expense.

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#### Note 12.13 – Income Tax

The income tax provision for continuing operations is made up of the following components:

(In thousands)	2022	2021	2020	2023	2022	2021
	(52 Weeks)	(52 Weeks)	(53 Weeks)			
<b>Current income tax expense:</b>						
Federal	\$ 8,585	\$ 5,436	\$ 1,844	\$ 6,698	\$ 8,585	\$ 5,436
State	2,397	1,867	5,149	2,961	2,397	1,867
Total current income tax expense	10,982	7,303	6,993	9,659	10,982	7,303
<b>Deferred income tax expense (benefit):</b>						
Deferred income tax expense:						
Federal	46	14,877	5,637	6,546	46	14,877
State	1,369	2,726	(3,180)	1,683	1,369	2,726
Total deferred income tax expense	1,415	17,603	2,457	8,229	1,415	17,603
Total income tax expense	\$ 12,397	\$ 24,906	\$ 9,450	\$ 17,888	\$ 12,397	\$ 24,906

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A reconciliation of the statutory federal rate to the effective rate is as follows:

	2022	2021	2020
	(52 Weeks)	(52 Weeks)	(53 Weeks)
Federal statutory income tax rate	21.0 %	21.0 %	21.0 %
Stock compensation	(2.8)	0.0	0.7
Non-deductible expenses	5.5	1.7	1.9
Change in tax contingencies	(0.1)	0.0	0.9
Charitable product donations	(0.3)	(0.1)	(0.2)
Other, net	0.1	(0.3)	(1.0)
Federal loss carryback (a)	—	—	(11.9)
State taxes, net of federal income tax benefit	6.7	3.8	1.7
Tax credits	(3.7)	(0.9)	(2.0)
Effective income tax rate	26.4 %	25.2 %	11.1 %

(a) On March 27, 2020, the U.S. government enacted tax legislation to provide economic stimulus and support businesses and individuals during the COVID-19 pandemic, referred to as the Coronavirus Aid, Relief and Economic Security ("CARES") Act. In connection with the CARES Act, the Company recorded net discrete income tax benefits of \$10.1 million in 2020 associated with the additional deductibility of certain expenses combined with provisions which enable companies to carry back tax losses to years prior to the enactment of the Tax Cuts and Jobs Act ("Tax Reform"), where the federal statutory income tax rate was 35%. As a result of carrying back losses to previous tax years, the Company recorded \$0.8 million in expense to reinstate tax contingencies which had previously expired, included in the "Change in tax contingencies" line in the table above.

	2023	2022	2021
	Federal statutory income tax rate	21.0 %	21.0 %
Stock compensation	(0.9)	(2.8)	0.0
Non-deductible expenses	3.4	5.5	1.7
Change in tax contingencies	(1.3)	(0.1)	0.0
Charitable product donations	(0.2)	(0.3)	(0.1)
Other, net	(0.3)	0.1	(0.3)
State taxes, net of federal income tax benefit	5.3	6.7	3.8
Tax credits	(1.5)	(3.7)	(0.9)
Effective income tax rate	25.5 %	26.4 %	25.2 %

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Deferred tax assets and liabilities resulting from temporary differences as of **December 31, 2022**, **December 30, 2023** and **January 1, 2022**, **December 31, 2022** are as follows:

(In thousands)	December 31,	January 1,	December 30,	December 31,
	2022	2022	2023	2022
Deferred tax assets:				
Employee benefits	\$ 27,387	\$ 25,358	\$ 21,074	\$ 27,387
Accrued workers' compensation	2,126	1,943	2,082	2,126
Allowance for credit losses	1,823	1,317	1,500	1,823
Restructuring	655	333	601	655
Deferred revenue	1,266	2,083	987	1,266
Stock warrant	626	1,258	31	626
Lease liabilities	82,284	85,781	82,970	82,284
Accrued insurance	985	893	1,045	985
State net operating loss carryforwards (a)	5,608	6,576	5,507	5,608
All other	4,433	2,338	8,538	4,433
Total deferred tax assets	127,193	127,880	124,335	127,193
Valuation allowances	(357)	—	(399)	(357)
Net deferred tax assets	126,836	127,880	123,936	126,836

Deferred tax liabilities:				
Property and equipment	48,251	47,240	49,038	48,251
Lease assets	73,986	76,589	74,472	73,986
Inventory	33,290	35,382	31,618	33,290
Goodwill	33,606	30,044	36,936	33,606
Intangible assets	1,195	187	2,200	1,195
All other	2,801	2,130	3,576	2,801
Total deferred tax liabilities	193,129	191,572	197,840	193,129
Net deferred tax liability	\$ 66,293	\$ 63,692	\$ 73,904	\$ 66,293

(a) As of **December 31, 2022** **December 30, 2023**, the Company's state net operating loss carryforwards in various taxing jurisdictions expire in tax years **2023** **2024** through **2042** **2043** if not utilized.

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

(In thousands)	2022	2021	2023	2022
Balance at beginning of year	\$ 1,220	\$ 1,317	\$ 1,165	\$ 1,220
Gross increases - tax positions taken in prior years	—	84		
Gross decreases - tax positions taken in prior years	—	(11)		
Lapsed statutes of limitations	(55)	(170)	(185)	(55)
Effectively settled			(836)	—
Balance at end of year	\$ 1,165	\$ 1,220	\$ 144	\$ 1,165

Unrecognized tax benefits of \$**1.0** **0.1** million are set to expire prior to **December 30, 2023** **December 28, 2024**. The Company recognizes interest and penalties accrued related to unrecognized tax benefits in income tax expense. **The amount recognized due to a lapse in the statute of limitations that reduced the Company's effective income tax rate in 2022 and 2021 was immaterial in both years.** The amount of unrecognized tax benefits, including interest and penalties, that would reduce the Company's effective income tax rate if recognized in future periods was \$**1.0** **0.1** million as of **December 31, 2022** **December 30, 2023**.

SpartanNash or its subsidiaries file income tax returns with federal, state and local tax authorities within the United States. With few exceptions, SpartanNash is no longer subject to examinations by U.S. federal tax authorities for fiscal years before the year ended **January 3, 2015** **January 2, 2021**, and state or local tax authorities for fiscal years before the year ended **December 31, 2018** **December 28, 2019**.

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## Note 13 14 – Share-Based Payments

### Share-Based Payments to Employees Stock-Based Employee Awards

The Company sponsors a shareholder-approved stock incentive plan (the "2020 Plan") that provides for the granting of stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, performance share units, dividend equivalent rights, and other stock-based and stock-related awards to directors, employees, or contractors of the Company, as determined by the Compensation Committee of the Board of Directors. Holders of restricted stock and stock awards issued under the 2020 Plan are entitled to participate in dividends, payable upon the vesting of the underlying awards. As of **December 31, 2022** **December 30, 2023**, a total of **1,441,593** **470,810** shares remained unissued under the 2020 Plan. **All In the event of a "Change in Control, as defined by the Plan, all outstanding unvested shares of restricted stock vest immediately, upon while outstanding unvested shares of performance share units vest immediately on a "Change in Control," as defined by the Plan.**

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### Restricted Shares Stock

Restricted stock awarded to **associates Associates** in **2023**, **2022** and **2021** vest ratably over a three-year service period and over one year for grants to members of the Board of Directors. Restricted **shares stock** awarded to **associates Associates** prior to **2021** vest ratably over a four-year service period. Awards are subject to forfeiture and certain transfer restrictions prior to vesting. Compensation expense, representing the fair value of the stock at the measurement date of the award, is recognized over the required service period.

The following table summarizes restricted stock activity for 2023, 2022, 2021 and 2020, 2021:

	Shares	Weighted Average Grant-Date Fair Value	Restricted Stock Awards	Weighted Average Grant-Date Fair Value
<b>Outstanding and nonvested at December 28, 2019</b>	928,733	\$ 20.28		
Granted	521,566	15.96		
Vested	(396,219)	21.65		
Forfeited	(80,132)	16.48		
<b>Outstanding and nonvested at January 2, 2021</b>	973,948	17.72	973,948	\$ 17.72
Granted	562,653	18.96	562,653	18.96
Vested	(388,403)	19.81	(388,403)	19.81
Forfeited	(116,361)	18.19	(116,361)	18.19
<b>Outstanding and nonvested at January 1, 2022</b>	1,031,837	17.56	1,031,837	17.56
Granted	391,334	28.63	391,334	28.63
Vested	(470,145)	17.92	(470,145)	17.92
Forfeited	(89,963)	20.71	(89,963)	20.71
<b>Outstanding and nonvested at December 31, 2022</b>	863,063	\$ 22.05	863,063	22.05
Granted			447,910	26.95
Vested			(432,549)	21.16
Forfeited			(58,967)	25.96
<b>Outstanding and nonvested at December 30, 2023</b>			819,457	\$ 24.92

The total intrinsic value of shares vested was \$11.7 million, \$14.3 million and \$7.3 million in 2023, 2022 and 2021, respectively. As of December 30, 2023, total unrecognized compensation cost related to nonvested restricted stock awards granted under the Company's stock incentive plans is \$5.39.0 million and is expected to be recognized over a weighted average period of 1.7 years.

#### Performance Share Units

Performance share units were awarded to certain officers and key Associates in 2022, 2021, 2023. The vesting of these awards is contingent upon meeting certain performance metrics over a three year period, which include adjusted EPS and 2020, respectively, return on invested capital. The quantity of shares awarded ranges from 0% to 200% of "Target," as defined in the award agreement, based on the achievement against the performance metrics. Stock-based compensation expense is recorded over the performance period and is reevaluated at each reporting date based on the probability of the achievement of the performance metrics. The fair value of performance shares is based on the Company's stock price on the date of grant. Performance share unit awards have a three-year cliff vest, subject to achievement of the performance metrics. Awards are subject to forfeiture and certain transfer restrictions prior to vesting.

The following table summarizes performance share unit activity for 2023:

	Performance Share Unit Awards	Weighted Average Grant-Date Fair Value
<b>Outstanding and nonvested at December 31, 2022</b>	—	\$ —
Granted	299,840	27.01
Forfeited	(9,530)	27.24
<b>Outstanding and nonvested at December 30, 2023</b>	290,310	\$ 27.00

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As of December 30, 2023, total unrecognized compensation cost related to nonvested performance share unit awards granted under the Company's stock incentive plans is \$5.8 million and is expected to be recognized over a weighted average period of 2.0 years.

#### Stock-Based Compensation Expense

Stock-based compensation expense recognized and included in "Selling, general and administrative expenses" in the consolidated statements of earnings, and related tax benefits were as follows:

(In thousands)	2022	2021	2020
	(52 Weeks)	(52 Weeks)	(53 Weeks)
Restricted stock	\$ 8,308	\$ 6,868	\$ 6,299
Tax benefits	(4,094)	(1,744)	(839)
Stock-based compensation stock expense, net of tax	\$ 4,214	\$ 5,124	\$ 5,460

(In thousands)	2023	2022	2021
	Restricted stock expense	\$ 10,220	\$ 8,308
Performance share unit expense	2,048	—	—
Income tax benefit	(4,199)	(4,094)	(1,744)
Stock-based compensation expense, net of tax	\$ 8,069	\$ 4,214	\$ 5,124

As Stock-based compensation expense is recognized net of December 31, 2022, total unrecognized compensation cost related to non-vested restricted stock awards granted under the stock incentive plan was \$8.4 million. The remaining compensation costs not yet recognized are expected to be recognized over a weighted average period of 1.8 years, estimated forfeitures, determined based on historical experience.

The Company recognized tax deductions of \$14.7 million, \$7.7 million and \$5.9 million related to the vesting of restricted stock and performance share units in 2023, 2022 and 2021, and 2020, respectively.

The Company sponsored a stock bonus plan covering 300,000 shares of SpartanNash common stock. Under the provisions of this plan, certain officers and key associates could elect to receive a portion of their annual bonus in common stock rather than cash, which was issued at 120% of cash value. After the shares are issued, the holder is not able to sell or otherwise transfer the shares until the end of the holding period, which is 24 months. Compensation expense is recorded based upon the market price of the stock as of the measurement date. Under the plan, 15,778 and 3,443 shares were issued in 2021, and 2020, respectively. The stock bonus plan expired on March 31, 2021.

In 2022, the Company adopted a new also sponsors an associate stock purchase plan ("2022 Plan"), which covers covering 300,000 shares of SpartanNash common stock and enables eligible associates of the Company to purchase shares at 85% of the fair market value. The Company has determined this represents compensation expense in accordance with ASC 718, Compensation – Stock Compensation. The 2022 Plan replaced a previous Company-sponsored associate stock purchase plan covering 200,000 shares of SpartanNash common stock that enabled associates of the Company to purchase shares at 95% of the fair market value. As of December 31, 2022, 194,195 shares were issued under the previous plan and 9,895 shares have been issued under the 2022 Plan.

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### Stock Warrant

On October 7, 2020, in connection with its entry into a commercial agreement with Amazon.com, Inc. ("Amazon"), the Company issued to Amazon.com NV Investment Holdings LLC, a subsidiary of Amazon, a warrant to acquire up to an aggregate of 5,437,272 shares of the Company's common stock (the "Warrant"), subject to certain vesting conditions. Warrant shares equivalent to 2.5% of the Company's outstanding and issuable shares, or totaling 1,087,455 shares vested upon the signing of the commercial agreement and had a grant date fair value of \$5.51 per share. Warrant shares equivalent to totaling up to 10.0% of the Company's outstanding and issuable shares, or 4,349,817 shares may vest in connection with conditions defined by the terms of the Warrant, as Amazon makes payments to the Company in connection with the commercial supply agreement, in increments of \$200 million, and had a grant date fair value of \$5.33 per share. Upon vesting, shares may be acquired at an exercise price of \$17.7257. The Warrant contains customary anti-dilution, down-round and change-in-control provisions. The right to purchase shares in connection with the Warrant expires on October 7, 2027.

Non-cash share-based payment expense associated with the Warrant is recognized as vesting conditions are achieved, based on the grant date fair value of the Warrant. The fair value of the Warrant was determined as of the grant date in accordance with ASC 718, Compensation – Stock Compensation, using the binomial lattice pricing model (the "lattice model"). The lattice model is based, in part, upon assumptions for which management is required to use judgment. The assumptions made for purposes of estimating fair value under the lattice model for the Warrant were as follows:

	Selected Assumption	Methodology
Risk free interest rate	0.56%	Derived from the Constant Maturity Treasury Rate with maturity matching time to expiration of the Warrants
Volatility	47.00%	Based on historical equity volatility of Company stock over a period matching the assumed warrants term
Dividend yield	4.57%	Based on the historical dividends paid by the Company

The warrant shares, which vested upon the signing of the commercial agreement, have a contractual term of 7 years, whereas the warrant shares, which vest upon payments made to the Company in connection with the commercial supply agreement, had an estimated weighted average term of 3.6 years.

The following table summarizes the Warrant activity for 2023, 2022, 2021 and 2020:

	Warrant
Outstanding and nonvested at December 28, 2019	—

Granted	5,437,272
Vested	(1,087,455)
<b>Outstanding and nonvested at January 2, 2021</b>	<b>4,349,817</b>
Vested	(434,984)
<b>Outstanding and nonvested at January 1, 2022</b>	<b>3,914,833</b>
Vested	(434,984)
<b>Outstanding and nonvested at December 31, 2022</b>	<b>3,479,849</b>
Vested	(217,492)
<b>Outstanding and nonvested at December 30, 2023</b>	<b>3,262,357</b>

Share-based payment Warrant expense recognized included as a reduction of "Net sales" in the consolidated statements of earnings, and related tax benefits were as follows:

(In thousands)	2022	2021	2020			
	(52 Weeks)	(52 Weeks)	(53 Weeks)	2023	2022	2021
Warrant expense	\$ 2,158	\$ 1,958	\$ 6,549	\$ 1,559	\$ 2,158	\$ 1,958
Tax benefits	(203)	(152)	(2,051)	(133)	(203)	(152)
Warrant expense, net of tax	\$ 1,955	\$ 1,806	\$ 4,498	\$ 1,426	\$ 1,955	\$ 1,806

As of December 31, 2022 December 30, 2023, total unrecognized cost related to non-vested warrants was \$18.5 17.0 million, which may be expensed as vesting conditions are satisfied over the remaining term of the agreement, or 4.8 3.8 years. Warrants representing 1,957,423 2,174,915 shares are vested and exercisable. As of December 31, 2022 December 30, 2023, non-vested warrant shares had an intrinsic value of \$43.5 17.0 million, and vested warrant shares had an intrinsic value of \$24.5 11.4 million.

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#### Note 14 15 – Supplemental Cash Flow Information

Supplemental cash flow information is as follows:

(In thousands)	2022	2021	2020			
	(52 Weeks)	(52 Weeks)	(53 Weeks)	2023	2022	2021
<b>Non-cash investing activities:</b>						
Capital expenditures included in accounts payable	\$ 25,701	\$ 15,277	\$ 15,984	\$ 28,102	\$ 25,701	\$ 15,277
<b>Non-cash financing activities:</b>						
Dividends declared but unpaid	324	485	99			
<b>Other supplemental cash flow information:</b>						
Cash paid for interest	18,431	12,245	18,448	37,939	18,431	12,245
Income tax payments (refunds)	6,513	(10,110)	18,717	11,172	6,513	(10,110)

#### Note 15 16 – Reporting Reportable Segment Information

SpartanNash sells and distributes products that are typically found in supermarkets and discount stores. The Company's operating segments reflect the manner in which the business is managed and how the Company allocates resources and assesses performance internally. The Company's Chief Operating Decision Maker is the Chief Executive Officer, who determines the allocation of resources and, through a regular review of financial information, assesses the performance of the operating segments. As disclosed in Note 1, during the third quarter of fiscal 2022, the Company combined the former Food Distribution and Military reportable segments into a single reportable segment, Wholesale. The Company's operations are now business is classified by management into two reportable segments: Wholesale and Retail. Segment These reportable segments are two distinct businesses, each with a different customer base, management structure, and basis for determining budgets, forecasts, and compensation. Where applicable, segment financial information from for the comparative prior year periods within this report has been recast to reflect this change.the Company's current reportable segment structure.

The Company reviews its reportable segments on an annual basis, or more frequently if events or circumstances indicate a change in reportable segments has occurred. Refer to Note 2 for information regarding the basis of organization and types of products, services and customers from which the Company derives revenue. The accounting policies of the segments are the same as those described in the summary of significant accounting policies in Note 1. Identifiable assets represent total assets directly associated with the reporting reportable segments. Eliminations in assets identified to segments include intercompany receivables, payables and investments. Capital

expenditures primarily relate to store remodels, IT upgrades and implementations, investments in supply chain infrastructure, office remodels, and equipment upgrades.

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The following tables set forth information about the Company by reporting reportable segment:

(In thousands)	Wholesale	Retail	Total	Wholesale	Retail	Total
<b>2022 (52 Weeks)</b>						
<b>2023</b>						
Net sales to external customers	\$ 6,845,236	\$ 2,797,864	\$ 9,643,100	\$ 6,919,217	\$ 2,810,002	\$ 9,729,219
Inter-segment sales	1,204,497	928	1,205,425	1,189,438	1,332	1,190,770
Acquisition and integration, net	239	104	343	216	3,200	3,416
Restructuring and asset impairment, net	(2,363)	3,168	805	8,548	642	9,190
Depreciation and amortization	47,601	46,579	94,180	51,535	47,104	98,639
Operating earnings	55,137	13,407	68,544	87,701	19,011	106,712
Capital expenditures	52,394	44,886	97,280	75,509	44,821	120,330
<b>2021 (52 Weeks)</b>						
<b>2022</b>						
Net sales to external customers	\$ 6,349,753	\$ 2,581,286	\$ 8,931,039	\$ 6,845,236	\$ 2,797,864	\$ 9,643,100
Inter-segment sales	1,095,647	827	1,096,474	1,204,497	928	1,205,425
Acquisition and integration, net	—	708	708	239	104	343
Restructuring and asset impairment, net	427	2,459	2,886	(2,363)	3,168	805
Depreciation and amortization	46,487	46,224	92,711	47,601	46,579	94,180
Operating earnings	45,229	66,971	112,200	55,137	13,407	68,544
Capital expenditures	46,020	33,407	79,427	52,394	44,886	97,280
<b>2020 (53 Weeks)</b>						
<b>2021</b>						
Net sales to external customers	\$ 6,710,568	\$ 2,637,917	\$ 9,348,485	\$ 6,349,753	\$ 2,581,286	\$ 8,931,039
Inter-segment sales	1,125,112	359	1,125,471	1,095,647	827	1,096,474
Acquisition and integration, net	—	421	421	—	708	708
Restructuring and asset impairment, net	21,085	3,313	24,398	427	2,459	2,886
Depreciation and amortization	44,677	45,199	89,876	46,487	46,224	92,711
Operating earnings	36,047	66,359	102,406	45,229	66,971	112,200
Capital expenditures	33,404	33,894	67,298	46,020	33,407	79,427
		December 31,	January 1,		December 30,	December 31,
(In thousands)		2022	2022		2023	2022
<b>Total Assets</b>						
<b>Total assets</b>						
Wholesale		\$ 1,525,760	\$ 1,459,440		\$ 1,576,182	\$ 1,525,760
Retail		780,801	747,342		779,393	780,801
Total		\$ 2,306,561	\$ 2,206,782		\$ 2,355,575	\$ 2,306,561

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

Not applicable.

### Item 9A. Controls and Procedures

#### Disclosure Controls and Procedures

An evaluation of the effectiveness of the design and operation of SpartanNash Company's disclosure controls and procedures (as currently defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) was performed as of **December 31, 2022** **December 30, 2023** (the "Evaluation Date"). This evaluation was performed under the supervision and with the participation of SpartanNash Company's management, including its Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO") and Corporate Controller. As of the Evaluation Date, SpartanNash Company's management, including the CEO, CFO and Corporate Controller, concluded that SpartanNash's disclosure controls and procedures were effective to ensure that material information required to be disclosed in the reports that the Company files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the Securities and Exchange Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in the reports that the Company files or submits under the Securities Exchange Act of 1934 is accumulated and communicated to management, including its principal executive, principal financial and principal accounting officers as appropriate to allow for timely decisions regarding required disclosure.

#### Management's Report on Internal Control Over Financial Reporting

The management of SpartanNash Company, including its CEO, CFO and Corporate Controller, is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. SpartanNash Company's internal controls were designed by, or under the supervision of, the CEO, CFO, and Corporate Controller, and effected by the Company's Board of Directors, management and other personnel, to provide reasonable assurance regarding the reliability of its financial reporting and the preparation and presentation of the consolidated financial statements for external purposes in accordance with GAAP and includes those policies and procedures that (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of SpartanNash Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of SpartanNash Company are being made only in accordance with authorizations of management and directors of SpartanNash Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of SpartanNash Company's assets that could have a material effect on the financial statements.

Management of SpartanNash Company conducted an evaluation of the effectiveness of its internal controls over financial reporting based on the framework in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Through this evaluation, management did not identify any material weakness in the Company's internal control. There are inherent limitations in the effectiveness of any system of internal control over financial reporting. Based on the evaluation, management has concluded that SpartanNash Company's internal control over financial reporting was effective as of **December 31, 2022** **December 30, 2023**.

The independent registered public accounting firm that audited the consolidated financial statements included in this Form 10-K Annual Report has issued an attestation report on the effectiveness of the Company's internal control over financial reporting as of **December 31, 2022** **December 30, 2023** as stated in their report on the following page.

#### Changes in Internal Controls Over Financial Reporting

During the last fiscal quarter, there was no change in SpartanNash's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, SpartanNash's internal control over financial reporting.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and shareholders of  
SpartanNash Company and subsidiaries  
Grand Rapids, Michigan

**Opinion on Internal Control over Financial Reporting**

We have audited the internal control over financial reporting of SpartanNash Company and subsidiaries (the "Company") as of **December 31, 2022** **December 30, 2023**, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of **December 31, 2022** **December 30, 2023**, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended **December 31, 2022** **December 30, 2023**, of the Company and our report dated **March 1, 2023** **February 28, 2024**, expressed an unqualified opinion on those financial statements.

**Basis for Opinion**

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

**Definition and Limitations of Internal Control over Financial Reporting**

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

/s/ DELOITTE & TOUCHE LLP

Grand Rapids, Michigan  
**March 1, 2023** **February 28, 2024**

**Item 9B. Other Information**

None. The Company has adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of the Company's securities by directors, officers and employees, or the Company itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and the listing standards of the Nasdaq Global Select Market.

None of the Company's directors or officers adopted or terminated a Rule 10b5-1 trading arrangement or a non-Rule 10b5-1 trading arrangement (as defined in Item 408(c) of Regulation S-K) during the during the fourth quarter of fiscal 2023.

**Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections**

Not Applicable.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this item is here incorporated by reference from the sections titled "Board of Directors," "SpartanNash's Executive Officers," "Ownership of SpartanNash Stock—Delinquent Stock," "Delinquent Section 16(a) Reports," and "Corporate Governance—Code of Conduct," in SpartanNash's definitive proxy statement relating to its annual meeting of shareholders to be held in 2023.2024.

**Item 11. Executive Compensation**

The information required by this item is here incorporated by reference from the sections entitled "Executive Compensation," "Compensation of Directors," "Board of Directors—Interlocks and Insider Relationships" and "Compensation Committee Report" in SpartanNash's definitive proxy statement relating to its annual meeting of shareholders to be held in 2023.2024.

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

The information required by this item is here incorporated by reference from the section titled "Ownership of SpartanNash Stock" in SpartanNash's definitive proxy statement relating to its annual meeting of shareholders to be held in 2023.2024.

The following table provides information about SpartanNash's equity compensation plans regarding the number of securities to be issued under these plans, the weighted-average exercise prices of options outstanding under these plans and the number of securities available for future issuance as of the end of fiscal 2022.2023:

**EQUITY COMPENSATION PLAN INFORMATION**

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (1))
	(1)	(2)	(3)
Equity compensation Plans approved by security holders (a)	—	—	1,441,593
Equity compensation plans not approved by security holders	—	Not applicable	—
<b>Total</b>	<b>—</b>	<b>—</b>	<b>1,441,593</b>

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (1))
	(1)	(2)	(3)
Equity compensation Plans approved by security holders (a)	580,620 (b)	— (c)	470,810
Equity compensation plans not approved by security holders	—	Not applicable	—
<b>Total</b>	<b>580,620</b>	<b>—</b>	<b>470,810</b>

(a) Consists of the Stock Incentive Plan of 2020. The numbers of shares reflected in column (3) in the table above with respect to the Stock Incentive Plan of 2020 represent shares remain available for future issuance under the plan other than upon the exercise of outstanding options, warrants or rights. The plan contains customary anti-dilution provision are applicable in the event of a stock split or certain other changes in SpartanNash's capitalization.

(b) This amount reflects the outstanding restricted stock and the maximum number of shares that may be issued under outstanding performance share units; however, the actual number of shares which may be issued will be determined based on the satisfaction of certain conditions, and therefore may be significantly lower.

(c) The weighted average exercise price excludes performance units, as there is no exercise price associated with these awards. The only outstanding options, warrants or rights

performance units. All equity awards were granted under our Stock Incentive Plan.  
See Note 14 to the consolidated financial statements for additional information.

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### Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this item is here incorporated by reference from the section titled "Transactions with Related Persons" and "Corporate Governance—Director Independence" in SpartanNash's definitive proxy statement relating to its annual meeting of shareholders to be held in 2023, 2024.

### Item 14. Principal Accountant Fees and Services

The information required by this item is here incorporated by reference from the section titled "Independent Auditors" in SpartanNash's definitive proxy statement relating to its annual meeting of shareholders to be held in 2023.

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## PART IV

### Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are filed as part of this Report:

#### 1. Financial Statements.

##### A. In Item 8.

Reports of Independent Registered Public Accounting Firm of Deloitte & Touche LLP (PCAOB ID No. 34) dated March 1, 2023, February 28, 2024

Consolidated Balance Sheets at December 31, 2022, December 30, 2023, and January 1, 2022, December 31, 2022

Consolidated Statements of Earnings for the years ended December 31, 2022, December 30, 2023, January 1, 2022, December 31, 2022, and January 2, 2021, January 1, 2022

Consolidated Statements of Comprehensive Income for the years ended December 31, 2022, December 30, 2023, January 1, 2022, December 31, 2022, and January 2, 2021, January 1, 2022

Consolidated Statements of Shareholders' Equity for the years ended December 31, 2022, December 30, 2023, January 1, 2022, December 31, 2022, and January 2, 2021, January 1, 2022

Consolidated Statements of Cash Flows for the years ended December 31, 2022, December 30, 2023, January 1, 2022, December 31, 2022, and January 2, 2021, January 1, 2022

Notes to Consolidated Financial Statements

#### 2. Financial Statement Schedules.

Schedules are omitted because the required information is either inapplicable or presented in the consolidated financial statements or related notes.

#### 3. Exhibits.

The information required by this Section (a)(3) of Item 15 is set forth on the exhibit index that follows precedes the Signatures page of this Form 10-K and is incorporated herein by reference.

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## EXHIBIT INDEX

- ...

Exhibit Number	Document
3.1	<a href="#">Restated Articles of Incorporation of SpartanNash Company, as amended</a> . Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended July 15, 2017. Incorporated herein by reference.
3.2	<a href="#">Bylaws of SpartanNash Company, as amended</a> . Previously filed as an exhibit to the Company's <b>Annual Current</b> Report on Form <b>10-K for the year ended December 31, 2016</b> <b>8-K filed on August 25, 2023</b> . Incorporated herein by reference.
4.1	<a href="#">Description of Capital Stock</a> . Previously filed as an exhibit to the Company's Annual Report on Form 10-K for the year ended January 2, 2021. Incorporated herein by reference.
10.1	<a href="#">Amendment No. 6 to Amended and Restated Loan and Security Agreement, dated November 17, 2022, among SpartanNash Company and certain of its subsidiaries, as borrowers, and Wells Fargo Capital Finance, LLC, as administrative agent, and certain lenders from time to time party thereto, thereto</a> . Previously filed as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2022. Incorporated herein by reference.
10.2*	<a href="#">Form of SPTN Long-Term Incentive Plan Document, Document</a> . Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended <b>April 23, 2022</b> <b>April 22, 2023</b> . Incorporated herein by reference.
10.3*	<a href="#">Form of SPTN Annual Cash Incentive Plan Document, Document</a> . Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended <b>April 23, 2022</b> <b>April 22, 2023</b> . Incorporated herein by reference.
10.4*	<a href="#">Form of 2021 Long-Term Incentive Plan</a> . Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended April 24, 2021. Incorporated herein by reference.
10.5*	<a href="#">Form of 2021 Annual Cash Incentive Plan</a> . Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended <b>April 24, 2021</b> . Incorporated herein by reference.
10.6*	<a href="#">Form of 2020 Long-Term Cash Incentive Plan</a> . Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended <b>April 18, 2020</b> . Incorporated herein by reference.
10.7*	<a href="#">SpartanNash Company Stock Incentive Plan of 2020</a> . Previously filed as an exhibit to the Company's Form S-8 filed on May 29, 2020. Incorporated herein by reference.
10.8* 10.6*	<a href="#">SpartanNash Company Stock Incentive Plan of 2015</a> . Previously filed as an exhibit to the Company's Form S-8 filed on June 4, 2015. Incorporated herein by reference.
10.9*	<a href="#">SpartanNash Company Supplemental Executive Retirement Plan, as amended</a> . Previously filed as an exhibit to the Company's Annual Report on Form 10-K for the year ended March 27, 2010. Incorporated herein by reference.
10.10* 10.7*	<a href="#">SpartanNash Company Supplemental Executive Savings Plan</a> . Previously filed as an exhibit to the Company's Form S-8 Registration Statement filed on December 21, 2001. Incorporated herein by reference.
10.11* 10.8*	<a href="#">Form of SPTN Restricted Stock Award Plan Document (Non-Employee Directors)</a> . Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended April 23, 2022. Incorporated herein by reference.
10.12* 10.9*	<a href="#">Form of Restricted Stock Award to Executive Officers</a> . Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended July 11, 2020. Incorporated herein by reference.
10.13* 10.10*	<a href="#">Form of SPTN Restricted Stock Award Plan Document (Associates)</a> . Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended April 23, 2022. Incorporated herein by reference.
10.14* 10.11*	<a href="#">Form of Indemnification Agreement</a> . Previously filed as an exhibit to the Company's Annual Report on Form 10-K for the year ended January 2, 2016. Incorporated herein by reference.

- 10.15\* [Executive Separation Agreement between SpartanNash Company and Kathleen Mahoney](#). Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended October 9, 2021. Incorporated herein by reference.
- 10.16\* 10.12\* [Executive Employment Agreement between SpartanNash Company and Tony B. Sarsam](#). Previously filed as an exhibit to the Company's Annual Report on Form 10-K for the year ended January 1, 2022. Incorporated herein by reference.
- 10.17\* 10.13\* [Form of Executive Employment Agreement between SpartanNash Company and certain executive officers](#). Previously filed as an exhibit to the Company's Annual Report on Form 10-K for the year ended January 1, 2022. Incorporated herein by reference.

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- 10.18\* [Executive Separation Agreement between SpartanNash Company and Yvonne Trupiano](#). Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended October 8, 2022. Incorporated herein by reference.
- 10.19\* 10.14\* [Executive Separation Agreement between SpartanNash Company and Arif Dar](#). Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended October 8, 2022. Incorporated herein by reference.
- 10.20 10.15\* [Form of SPTN Restricted Stock Award Plan Document \(Attorneys\)](#). Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended April 22, 2023. Incorporated herein by reference.
- 10.16 [Interest Rate Swap Agreement](#). Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended April 22, 2023. Incorporated herein by reference.
- 10.17 [Transaction Agreement, by and between SpartanNash and Amazon.com NV Investments Holdings LLC, dated as of October 7, 2020](#). Previously filed as an exhibit to the Company's Current Report on Form 8-K filed on October 8, 2020. Incorporated herein by reference.

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- 10.21 10.18 [Warrant to Purchase Common Stock of SpartanNash Company, by and between SpartanNash Company and Amazon.com NV Investment Holdings LLC, dated as of October 7, 2020](#). Previously filed as an exhibit to the Company's Current Report on Form 8-K filed on October 8, 2020. Incorporated herein by reference.
- 10.19 [Lender Joinder Agreement - Associated and CoBank, dated April 17, 2023](#). Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended April 22, 2023. Incorporated herein by reference.
- 10.20 [Lender Joinder and Assignment Agreement - Bank of America and TD Bank, dated April 3, 2023](#). Previously filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended April 22, 2023. Incorporated herein by reference.
- 10.21 [Lender Joinder Agreement - AgFirst Farm Credit Bank, dated October 26, 2023](#).
- 10.22\* [Executive Separation Agreement between SpartanNash Company and David Sisk](#).
- 19 [Insider Trading Policy](#).
- 21 [Subsidiaries of SpartanNash Company](#).
- 23 [Consent of Independent Registered Public Accounting Firm](#).
- 24 [Powers of Attorney](#).
- 31.1 [Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#).
- 31.2 [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#).
- 32.1 [Certification pursuant to 18 U.S.C. § 1350. This exhibit is furnished, not filed, in accordance with SEC Release Number 33-8212](#).
- 97 [Clawback Policy](#).



February 28, 2024	<p data-bbox="899 138 1032 197">Fred Bentley, Jr. Director</p> <p data-bbox="829 205 1524 296">By * _____ Douglas A. Hacker Chairman of the Board</p>
March 1, 2023 February 28, 2024	<p data-bbox="899 365 1224 422">Matthew Mannelly Kerrie D. MacPherson Director</p> <p data-bbox="829 331 1524 422">By * _____ Matthew Mannelly Kerrie D. MacPherson Director</p>
March 1, 2023	<p data-bbox="899 491 1052 548">Hawthorne Proctor Director</p> <p data-bbox="829 457 1524 548">By * _____ Hawthorne Proctor Director</p>
March 1, 2023	<p data-bbox="899 592 1029 648">William R. Voss Director</p> <p data-bbox="829 558 1524 648">By * _____ William R. Voss Director</p>
March 1, 2023 February 28, 2024	<p data-bbox="899 686 1057 743">Julien R. Mininberg Director</p> <p data-bbox="829 653 1524 743">By * _____ Julien R. Mininberg Director</p>
March 1, 2023 February 28, 2024	<p data-bbox="899 812 1029 869">Jaymin B. Patel Director</p> <p data-bbox="829 779 1524 869">By * _____ Jaymin B. Patel Director</p>
March 1, 2023 February 28, 2024	<p data-bbox="899 938 1073 995">Hawthorne L. Proctor Director</p> <p data-bbox="829 905 1524 995">By * _____ Hawthorne L. Proctor Director</p>
February 28, 2024	<p data-bbox="899 1064 1094 1121">Pamela S. Puryear, PhD Director</p> <p data-bbox="829 1031 1524 1121">By * _____ Pamela S. Puryear, PhD Director</p>
March 1, 2023 February 28, 2024	<p data-bbox="899 1190 1029 1247">William R. Voss Director</p> <p data-bbox="829 1157 1524 1247">By * _____ William R. Voss Director</p>
February 28, 2024	<p data-bbox="899 1262 1198 1381">Tony B. Sarsam President and Chief Executive Officer (Principal Executive Officer)</p> <p data-bbox="829 1257 1524 1381">By /s/ Tony B. Sarsam _____ Tony B. Sarsam President and Chief Executive Officer (Principal Executive Officer)</p>
March 1, 2023 February 28, 2024	<p data-bbox="899 1421 1312 1541">Jason Monaco Executive Vice President and Chief Financial Officer (Principal Financial Officer)</p> <p data-bbox="829 1417 1524 1541">By /s/ Jason Monaco _____ Jason Monaco Executive Vice President and Chief Financial Officer (Principal Financial Officer)</p>
March 1, 2023 February 28, 2024	<p data-bbox="899 1581 1219 1701">R. Todd Riksen Vice President and Corporate Controller (Principal Accounting Officer)</p> <p data-bbox="829 1577 1524 1701">By /s/ R. Todd Riksen _____ R. Todd Riksen Vice President and Corporate Controller (Principal Accounting Officer)</p>
March 1, 2023 February 28, 2024	<p data-bbox="899 1736 1040 1820">Jason Monaco Attorney-in-Fact</p> <p data-bbox="829 1732 1524 1820">*By /s/ Jason Monaco _____ Jason Monaco Attorney-in-Fact</p>

Exhibit 10.1 10.21

[Execution]

AMENDMENT NO. 6 TO  
AMENDED AND RESTATED LOAN AND SECURITY LENDER JOINDER  
AGREEMENT

AMENDMENT NO. 6 TO AMENDED AND RESTATED LOAN AND SECURITY LENDER JOINDER AGREEMENT, dated as of ~~November 17, 2022~~ October 26, 2023 (this "Amendment No. 6" "Joinder"), is by and among SpartanNash Company, a Michigan corporation, formerly known as Spartan Stores, Inc. ("Parent") WELLS FARGO CAPITAL FINANCE, LLC, Spartan Stores Distribution, LLC, a Michigan limited liability company ("Stores Distribution"), Market Development, LLC, a Michigan limited liability company ("MDC"), SpartanNash Associates, LLC, a Michigan limited liability company, formerly known as Spartan Stores Associates, LLC ("Associates"), Family Fare, LLC, a Michigan limited liability company ("Family Fare"), Seaway Food Town, Inc., a Michigan corporation ("Seaway"), Valley Farm Distributing Co., an Ohio corporation ("Valley Farm"), Gruber's Real Estate, LLC, a Michigan limited liability company ("Gruber RE"), Prevo's Family Markets, Inc., a Michigan corporation ("Prevo"), Spartan Properties Management, Inc. (formerly known as Buckeye Real Estate Management Co.), an Ohio corporation ("SPM"), Spartan Stores Fuel, LLC, a Michigan limited liability company ("Spartan Fuel"), Nash-Finch Company, a Delaware corporation, as surviving corporation of the merger with SS Delaware, Inc. ("Nash-Finch"), Pique Brands, Inc., a Delaware corporation, formerly known as Nash Brothers Trading Company ("Pique"), Super Food Services, Inc., a Delaware corporation ("Super Food"), U Save Foods, Inc., a Nebraska corporation ("U Save"), Hinky Dinky Supermarkets, Inc., a Nebraska corporation ("Hinky Dinky"), GTL Truck Lines, Inc., a Nebraska corporation ("GTL"), Erickson's Diversified Corporation, a Wisconsin corporation ("Erickson's"), MDV SpartanNash, LLC, a Delaware limited liability company, ("MDV"), Caito Foods, LLC, a Michigan limited liability company ("Caito"), SpartanNash Logistics, LLC, a Michigan limited liability company, formerly known as BRT SpartanNash, LLC ("Logistics" agent (in such capacity, "Administrative Agent"), SpartanNash Procurement, LLC, a Michigan limited liability company ("SNP"), MSM Holdco, LLC, an Indiana limited liability company ("MSM Holdco"), Martin's Super Markets L.L.C., an Indiana limited liability company ("MSM"), Martin's Super Markets on behalf of Elkhart L.L.C., an Indiana limited liability company ("MSM of Elkhart"), Martin's Super Markets of Elkhart East L.L.C., an Indiana limited liability company ("MSM of Elkhart East"), Martin's Super Markets of Logansport L.L.C., an Indiana limited liability company ("MSM of Logansport"), Martin's Super Markets of Niles L.L.C., an Indiana limited liability company ("MSM of Niles"), Martin's Super Markets of Nappanee L.L.C., an Indiana limited liability company ("MSM of Nappanee"), Martin's Super Markets of St. Joseph L.L.C., an Indiana limited liability company ("MSM of St. Joseph"), Martin's Super Markets of Stevensville L.L.C., an Indiana limited liability company ("MSM of Stevensville"), Martin's MO LLC, an Indiana limited liability company ("Martin's MO"), County Development LLC, an Indiana limited liability company ("County Development"), Martin's West LLC, an Indiana limited liability company ("Martin's West"), 200 Elkhart Ave LLC, an Indiana limited liability company ("Elkhart Ave"), Martin's Integrated Pharmacy Services LLC, an Indiana limited liability company ("Integrated Pharmacy", and together with Parent, Stores Distribution, MDC, Associates, Family Fare, Seaway, Valley Farm, Gruber RE, Prevo, SPM, Spartan Fuel, Nash-Finch, Pique, Super Food, U Save, Hinky Dinky, GTL, Erickson's, MDV, Caito, Logistics, SNP, MSM Holdco, MSM, MSM of Elkhart, MSM of Elkhart East, MSM of Logansport, MSM of Niles, MSM of Nappanee,

MSM of St. Joseph, MSM of Stevensville, Martin's MO, County Development, Martin's West and Elkhart Ave, each individually a "Borrower" and collectively,

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"Borrowers"), any Person that at any time becomes a the lenders party to the Loan Agreement as a guarantor (each individually a "Guarantor" and collectively, "Guarantors"), the parties to the Loan Agreement (as hereinafter defined) from time to time as lenders (each individually, (individually, each a "Lender" and collectively, "Lenders"), AGFIRST FARM CREDIT BANK, as a new Lender ("New Lender") and Wells Fargo Capital Finance, LLC, SPARTANNASH COMPANY, a Delaware limited liability company, Michigan corporation, formerly known as Spartan Stores, Inc., in its capacity as agent for Lenders Lead Borrower (in such capacity, "Administrative Agent" "Lead Borrower"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement (as defined below).

**WITNESSETH:**

WHEREAS, Borrowers and Guarantors have entered into financing arrangements with Administrative Agent and Lenders pursuant to which Lenders (or Administrative Agent on behalf of Lenders) have made and may make loans and advances and provide other financial accommodations to Borrowers as set forth in the Amended and Restated Loan and Security Agreement, dated as of November 19, 2013, by and among Borrowers, Guarantors, Administrative Agent and Lenders, as amended by Amendment No. 1 to Amended and Restated Loan and Security Agreement, dated January 9, 2015, Amendment No. 2 to Amended and Restated Loan and Security Agreement, dated December 20, 2016, Amendment No. 3 to Amended and Restated Loan and Security Agreement, dated November 21, 2017, Amendment No. 4 to Amended and Restated Loan and Security Agreement, dated as of December 18, 2018 and Amendment No. 5 to Amended and Restated Loan and Security Agreement, dated March 22, 2019 (as the same now exists, the "Existing and Amendment No. 6 to Amended and Restated Loan Agreement" and the Existing Loan Security Agreement, as dated November 17, 2022 (as amended and supplemented pursuant hereto and as may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement") and the other Financing Agreements; and

WHEREAS, Borrowers, Guarantors, Administrative Agent pursuant to Section 2.6 of the Loan Agreement, the Lead Borrower has requested an increase in the Tranche A Maximum Credit and Lenders have the Tranche A Commitments under the Loan Agreement by \$75,000,000, and New Lender has agreed to amend the Existing Loan Agreement and replace it provide such new Tranche A Commitment, in its entirety in the form of Exhibit A to this Amendment No. 6 pursuant each case, subject to the terms and satisfaction of the conditions set forth in Section 2.6 of this Amendment No. 6; and the Loan Agreement;

WHEREAS, by this Amendment No. 6, Borrowers, Guarantors, Administrative Agent and Lenders desire and intend to evidence such amendments;

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

**SECTION 1. Interpretation Joinder of New Lender. For purposes**

(a) Upon the effectiveness of this Amendment No. 6, all terms used herein which are not otherwise defined herein, including but not limited to, those terms used in the recitals hereto,

shall have the respective meanings assigned thereto in the Loan Agreement as amended by this Amendment No. 6.

## 2. Amendment of Loan Agreement.

(a) The Existing Loan Agreement is hereby amended to read in its entirety as set forth in Exhibit A hereto (the "Amended Loan Agreement"). All schedules and exhibits to the Existing Loan Agreement, as in effect immediately prior to the Amendment No. 6 Effective Date, shall constitute schedules and exhibits to the Amended Loan Agreement except, that, those schedules and exhibits which are attached to the Amended Loan Agreement shall constitute those respective schedules and exhibits after the date of this Amendment No. 6. Each reference

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### Exhibit 10.1

in the Loan Agreement to "this Agreement," "hereunder," "hereof," "herein" or words of similar import, and each reference in the other Financing Agreements to the "Loan Agreement" (including, without limitation, by means of words such as "thereunder" or "thereof" and words of similar import), shall mean and be a reference to the Loan Agreement as amended herein as reflected by the Amended Loan Agreement. The Administrative Agent, each of the Lenders signatory hereto, each Borrower and each Guarantor consent to the amendment of the Loan Agreement pursuant to this Amendment No. 6.

(i) Notwithstanding anything to the contrary contained in the Loan Agreement or the other Financing Agreements, (i) effective as of the Amendment No. 6 Effective Date, the commitment of each Joinder, New Lender to make Eurodollar Rate Loans (as defined in the Existing Loan Agreement as in effect immediately prior to the Amendment No. 6 Effective Date), continue Eurodollar Rate Loans as such, or convert Base Rate Loans to Eurodollar Rate Loans shall be cancelled, and (ii) any outstanding Eurodollar Rate Loans shall automatically be converted to SOFR Rate Loans as of the Amendment No. 6 Effective Date (without the requirement to pay any breakage or similar fees with respect to such conversions).

### SECTION 2. Joinder of Compeer Financial, PCA as a Lender.

(a) Upon the date hereof, Compeer Financial, PCA ("New Lender") shall be deemed to have a Tranche A Commitment in the aggregate amount of ~~\$50,000,000~~ \$75,000,000 (the "Compeer "New Commitment") as set forth on Exhibit F to and the Amended Loan Agreement.

(ii) As Tranche A Maximum Credit shall be increased by the amount of the Amendment No. 6 Effective Date, New Commitment, in each case, in accordance with Section 2.6 of the Loan Agreement.

(b) Upon the effectiveness of this Joinder, New Lender shall (i) be a party to the Loan Agreement, (ii) be a "Lender" for all purposes of the Loan Agreement and the other Financing Agreements, and (iii) to the extent of the interest of New Lender pursuant to this Amendment No. 6, Joinder, have the rights and obligations of a Lender under the Loan Agreement and the other Financing Agreements.

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(c)

(b)

New Lender represents and warrants that:

(i) it has full power and authority, and has taken all action necessary, to execute and deliver this Amendment No. 6 Joinder and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement,

(ii)

(C)

from and after the Amendment No. 6 Effective Date, effectiveness of this Joinder, with respect to the Compeer its New Commitment, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of its Commitment, shall have the obligations of a Lender thereunder,

(iii)

(ii)

it is sophisticated with respect to decisions to acquire assets of the type represented by the Compeer its New Commitment,

(D) (iv) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to Section 9.6 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Amendment No. 6 Joinder and to become a Lender on the basis of

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Exhibit 10.1

which it has made such analysis and decision independently and without reliance on Administrative Agent or any other Lender, and

(iii)

(v) it has delivered to Administrative Agent such information about such New Lender as required by the Loan Agreement and any applicable tax forms required to be delivered by it pursuant to the Loan Agreement.

(c) (d) New Lender agrees that:

(i) it will, independently and without reliance on Administrative 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 action under the Loan Agreement;

(ii)

(E)

it appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Loan Agreement and the other Financing Agreements

as are delegated to Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto;

(ii) (iii) confirms that it is an Eligible Transferee; and

(iv)

(F)

it will perform in accordance with their terms all of the obligations which by the terms of the Loan Agreement and the other Financing Agreements are required to be performed by it as a Lender.

SECTION 3. **2. Settlement.** Borrowers will prepay and reborrow (pursuant to the terms of the Loan Agreement) the outstanding Loans as of the date hereof, if any, in an amount necessary such that after giving effect to the amended Commitments set forth on Exhibit F to the Amended Loan Agreement, A hereto, each Lender (including existing Lenders and the New Lender) will hold its pro rata share of outstanding Loans.

3. **Representations and Warranties Total Commitments.** Each Borrower Following the effectiveness of the New Commitment and Guarantor hereby represents and warrants the conditions to Administrative Agent and Lenders the following (which shall survive the execution and delivery effectiveness of this Amendment No. 6), Joinder, the truth and accuracy of which are a continuing condition of the making of Loans and providing Letter of Credit Accommodations to Borrowers:

(a) This Amendment No. 6 and each other agreement or instrument to be executed and delivered by the Borrowers and Guarantors pursuant hereto (collectively, together with this Amendment No. 6, the "Amendment Documents") have been duly authorized, executed and delivered by all necessary action on the part of each of the Borrowers and Guarantors which is a party hereto and thereto and, if necessary, their respective stockholders, members and managers and is in full force and effect as of the date hereof, as the case may be, and the agreements and obligations of each of the Borrowers and Guarantors, as the case may be, contained herein and therein, constitute the legal, valid and binding obligations of each of the Borrowers and Guarantors, respectively, enforceable against them in accordance with their terms, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to

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the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(i) The execution, delivery and performance of each Amendment Document (a) is within each Borrower's and Guarantor's corporate or limited liability company powers, as applicable, and (b) is not in contravention of law or the terms of any Borrower's or Guarantor's certificate or articles of incorporation or organization, by laws, operating agreement, or other organizational documentation, or any indenture, agreement or undertaking to which any Borrower or Guarantor is a party or by which any Borrower or Guarantor or its property are bound.

(b) All of the representations and warranties set forth in updated Commitments under the Loan Agreement and the other Financing Agreements are true and correct in all material respects (except that such materiality qualifier shall not will be

applicable as set forth on Exhibit A to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date hereof, as if made on the date hereof, except to the extent any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such date.

(ii) Each Borrower and each Guarantor, as debtor, grantor, pledgor, guarantor, assignor, or in any other similar capacity in which such Borrower or Guarantor grants liens or security interests in its property or otherwise acts as accommodation party or guarantor, as the case may be, hereby (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Financing Agreements to which it is a party (after giving effect hereto) and (ii) to the extent such Borrower or Guarantor granted liens on or security interests in any of its property pursuant to any such Financing Agreement as security for or otherwise guaranteed the Obligations under or with respect to the Financing Agreements, ratifies and reaffirms such guarantee and grant of security interests and liens and confirms and agrees that such security interests and liens hereafter secure all of the Obligations as amended hereby.

(c) No Default or Event of Default exists or has occurred and is continuing as of the date of this Amendment No. 6, or would result after giving effect thereto. Joinder.

SECTION 4. Condition Precedent. The amendments contained herein This Joinder shall only be effective upon the satisfaction of each of the following conditions precedent in a manner satisfactory to Administrative Agent:

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(a) receipt by Administrative Agent of shall have received counterparts of this Amendment No. 6, Joinder, duly authorized, executed and delivered by the parties hereto (including all Lenders required for the amendments provided for herein);

(ii) receipt by Administrative Agent of a true Lead Borrower and correct copy of any consent, waiver or approval (if any) to or of this Amendment No. 6, which any Borrower is required to obtain from any other Person;

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Exhibit 10.1

New Lender;

(b) Administrative Agent shall have received a certificate from the Secretary of each Loan Party (i) attesting to the resolutions of such Loan Party's board of directors, members, or managers, as applicable, authorizing the execution, delivery, and performance of the Amendment Documents to which it is a party, (ii) authorizing specific officers of such Loan Party to execute the same, (iii) attesting to the incumbency and signatures of such specific officers of such Loan Party, and (iv) attaching true, correct

and complete copies of the certificate or articles of incorporation or organization, by laws, operating agreement, or other organizational documents of such Loan Party;

(iv)

Administrative Agent shall have received in immediately available funds (or Administrative Agent shall have charged the loan account of Borrowers) the full amount of all fees required to be paid by the Borrowers in connection with this Amendment No. 6;

Joinder; and

(c) Administrative Agent and Lenders shall have received internal Flood Disaster Prevention Act approval; and approval.

5.

(v) no Default or Event of Default shall exist or have occurred and be continuing as of the date of this Amendment No. 6, or would result after giving effect thereto.

**SECTION 5. Effect of this Amendment.** Except as expressly amended pursuant hereto, no other changes or modifications to the Financing Agreements are intended or implied, and, in all other respects, the Financing Agreements are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof. To the extent that any provision of the Loan Agreement or any of the other Financing Agreements are inconsistent with the provisions of this Amendment No. 6, the provisions of this Amendment No. 6 shall control. By executing this Amendment No. 6, each Borrower and each Guarantor is deemed to execute the Loan Agreement and to be bound by the terms and conditions thereof.

4.

**Further Assurances.** Borrowers, Administrative Agent and Guarantors shall New Lender each hereby agree to execute and deliver such additional documents other instruments, and take such additional other action, as any party may be reasonably requested request in connection with the transactions contemplated by Administrative Agent to effectuate the provisions and purposes of this Amendment No. Joinder.

6.

**SECTION 6. No Novation.** The amendment and restatement of the Existing Loan Agreement pursuant to this Amendment No. 6 and the Amended Loan Agreement shall not, in any manner, be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of, the Obligations and other obligations and liabilities of Borrowers and Guarantors evidenced by or arising under the Existing Loan Agreement or any of the other Financing Agreements and each Borrower and Guarantor confirms and agrees that it continues to remain liable for all such Obligations and other obligations and liabilities, and the liens and security interests in the Collateral of Administrative Agent and Lenders securing such Obligations and other obligations and liabilities, which shall not in any manner be impaired, limited, terminated, waived or released, but shall continue in full force and effect in favor of Administrative Agent for the benefit of Lenders.

**5. Governing Law.** The validity, interpretation and enforcement of this Amendment No. 6 and the other Financing Agreements (except as otherwise provided therein) and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise,

**Exhibit 10.1**

shall be governed by the internal laws of the State of Illinois but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of Illinois.

**SECTION 7.**

Binding Effect. This Amendment No. 6 Joinder shall be binding upon bind and inure to the benefit of each of the parties hereto and their respective successors and assigns, assigns permitted by the Loan Agreement.

6. 7.Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 6.

**SECTION 8.**

Counterparts, etc. This Amendment No. 6, Joinder, any documents executed in connection herewith and any notices delivered under this Amendment No. 6, Joinder, may be executed by means of (i) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Agent reserves the right, in its sole discretion, to accept, deny, or condition acceptance of any electronic signature on this Amendment No. 6 Joinder or on any notice delivered to Agent under this Amendment No. 6, Joinder. This Amendment No. 6 Joinder and any notices delivered under this Amendment No. 6 Joinder may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument. Delivery of an executed counterpart of a signature page of this Amendment No. 6 Joinder and any notices as set forth herein will be as effective as delivery of a manually executed counterpart of the Amendment No. 6 Joinder or notice.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 6 to be duly executed and delivered by their authorized officers as of the day and year first above written.

ADMINISTRATIVE AGENT

BORROWERS

WELLS FARGO CAPITAL FINANCE, LLC,  
as Administrative Agent

SPARTANNASH COMPANY, formerly  
known as Spartan Stores, Inc.

By:/s/ Peter Foley

By:/s/ William Jacobs

Title: Duly Authorized Signatory

Title: Treasurer

[Signature Page to Amendment No. 6 (Spartan)]

SPARTAN STORES DISTRIBUTION, LLC  
MARKET DEVELOPMENT, LLC  
SPARTANNASH ASSOCIATES, LLC

FAMILY FARE, LLC  
SEAWAY FOOD TOWN, INC.  
VALLEY FARM DISTRIBUTING CO.  
GRUBER'S REAL ESTATE, LLC  
PREVO'S FAMILY MARKETS, INC.  
SPARTAN PROPERTIES MANAGEMENT, INC.  
SPARTAN STORES FUEL, LLC  
CAITO FOODS, LLC  
SPARTANNASH LOGISTICS, LLC  
SPARTANNASH PROCUREMENT, LLC

By: /s/ William Jacobs

Title: Authorized Officer

NASH-FINCH COMPANY  
PIQUE BRANDS, INC.  
SUPER FOOD SERVICES, INC.  
U SAVE FOODS, INC.  
HINKY DINKY SUPERMARKETS, INC.  
GTL TRUCK LINES, INC.  
ERICKSON'S DIVERSIFIED CORPORATION  
MDV SPARTANNASH, LLC

By: /s/ William Jacobs

Title: Authorized Officer

[Signature Page to Amendment No. 6 (Spartan)]

**Exhibit 10.1**

MSM HOLDCO, LLC  
MARTIN'S SUPER MARKETS L.L.C.  
MARTIN'S SUPER MARKETS OF ELKHART  
L.L.C.  
MARTIN'S SUPER MARKETS OF ELKHART  
EAST L.L.C.  
MARTIN'S SUPER MARKETS OF  
LOGANSPORT L.L.C.  
MARTIN'S SUPER MARKETS OF NILES L.L.C.  
MARTIN'S SUPER MARKETS OF NAPPANEE  
L.L.C.  
MARTIN'S SUPER MARKETS OF ST. JOSEPH  
L.L.C. MARTIN'S SUPER MARKETS OF  
STEVENSVILLE L.L.C.  
MARTIN'S MO LLC  
COUNTY DEVELOPMENT LLC  
MARTIN'S WEST LLC  
200 ELKHART AVE LLC  
MARTIN'S INTEGRATED PHARMACY  
SERVICES LLC  
By: /s/ William Jacobs  
Name: William Jacobs  
Title: President

**LENDERS**

**WELLS FARGO CAPITAL FINANCE, LLC,**  
as a Lender

By:

Title:

[Signature Page to Amendment No. 6 (Spartan)]

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**BANK OF AMERICA, N.A.,**  
as a Lender

By: 8.

Name:

Title:

[Signature Page to Amendment No. 6 (Spartan)]

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**PNC BANK, NATIONAL ASSOCIATION,**  
as a Lender

By:

Name:

Title:

[Signature Page to Amendment No. 6 (Spartan)]

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**BMO HARRIS BANK N.A.,**  
as a Lender

By:

Name:

Title:

[Signature Page to Amendment No. 6 (Spartan)]

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**FIFTH THIRD BANK,**  
as a Lender

By:

Name:

Title:

[Signature Page to Amendment No. 6 (Spartan)]

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**JPMORGAN CHASE BANK, N.A.,**  
as a Lender

By:

Name:

Title:

[Signature Page to Amendment No. 6 (Spartan)]

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**U.S. BANK NATIONAL ASSOCIATION,**  
as a Lender

By:

Name:

Title:

[Signature Page to Amendment No. 6 (Spartan)]

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**COMPEER FINANCIAL, PCA,**  
as New Lender and a Lender

By:

Name:

Title:

[Signature Page to Amendment No. 6 (Spartan)]

**Exhibit A**

to

**Amendment No. 6 to Amended and Restated Loan and Security Agreement**

**Amended Loan Agreement**

See attached.

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**Exhibit A**

to

**Amendment No. 6 to Amended and Restated Loan and Security Agreement**

**Amended and Restated Loan and Security Agreement**

by and among

**SpartanNash Company (formerly, Spartan Stores, Inc.) and certain of its Subsidiaries**

**as Borrowers**

and

**Any Person that becomes a Guarantor hereunder**

**Wells Fargo Capital Finance, LLC**

**as Administrative Agent**

**The Lenders from Time to Time Party Hereto**

**as Lenders**

**Wells Fargo Bank, National Association**

**Bank of America, N.A.**

and

**Fifth Third Bank**

**as Joint Lead Arrangers and Joint Bookrunners**

**Bank of America, N.A.**

and

**Fifth Third Bank**

**as Syndication Agents**

**BMO Harris Bank, N.A.**

**U.S. Bank, National Association**

**as Documentation Agents**

**Dated: November 19, 2013**

**as amended through November 17, 2022**

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**AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

This Amended and Restated Loan and Security Agreement dated, and as amended and restated, as of November 19, 2013 (the "Effective Date") is entered into by and among SpartanNash Company, a Michigan corporation, formerly known as

Spartan Stores, Inc. (“Parent”), Spartan Stores Distribution, LLC, a Michigan limited liability company (“Stores Distribution”), Market Development, LLC, a Michigan limited liability company (“MDC”), SpartanNash Associates, LLC, a Michigan limited liability company, formerly known as Spartan Stores Associates, LLC (“Associates”), Family Fare, LLC, a Michigan limited liability company (“Family Fare”), Seaway Food Town, Inc., a Michigan corporation (“Seaway”), Valley Farm Distributing Co., an Ohio corporation (“Valley Farm”), Gruber’s Real Estate, LLC, a Michigan limited liability company (“Gruber RE”), Prevo’s Family Markets, Inc., a Michigan corporation (“Prevo”), Spartan Properties Management, Inc., formerly known as Buckeye Real Estate Management Co., an Ohio corporation (“SPM”), Spartan Stores Fuel, LLC, a Michigan limited liability company (“Spartan Fuel”), Nash-Finch Company, a Delaware corporation, as surviving corporation of the merger with SS Delaware, Inc. (“Nash-Finch”), Pique Brands, Inc., a Delaware corporation, formerly known as Nash Brothers Trading Company (“Pique”), Super Food Services, Inc., a Delaware corporation (“Super Food”), U Save Foods, Inc., a Nebraska corporation (“U Save”), Hinky Dinky Supermarkets, Inc., a Nebraska corporation (“Hinky Dinky”), GTL Truck Lines, Inc., a Nebraska corporation (“GTL”), Erickson’s Diversified Corporation, a Wisconsin corporation (“Erickson’s”), MDV SpartanNash, LLC, a Delaware limited liability company (“MDV”), Caito Foods, LLC, a Michigan limited liability company (“Caito”), SpartanNash Logistics, LLC, a Michigan limited liability company, formerly known as BRT SpartanNash, LLC (“Logistics”), SpartanNash Procurement, LLC, a Michigan limited liability company (“SNP”), MSM Holdco, LLC, an Indiana limited liability company (“MSM Holdco”), Martin’s Super Markets L.L.C., an Indiana limited liability company (“MSM”), Martin’s Super Markets of Elkhart L.L.C., an Indiana limited liability company (“MSM of Elkhart”), Martin’s Super Markets of Elkhart East L.L.C., an Indiana limited liability company (“MSM of Elkhart East”), Martin’s Super Markets of Logansport L.L.C., an Indiana limited liability company (“MSM of Logansport”), Martin’s Super Markets of Niles L.L.C., an Indiana limited liability company (“MSM of Niles”), Martin’s Super Markets of Nappanee L.L.C., an Indiana limited liability company (“MSM of Nappanee”), Martin’s Super Markets of St. Joseph L.L.C., an Indiana limited liability company (“MSM of St. Joseph”), Martin’s Super Markets of Stevensville L.L.C., an Indiana limited liability company (“MSM of Stevensville”), Martin’s MO LLC, an Indiana limited liability company (“Martin’s MO”), County Development LLC, an Indiana limited liability company (“County Development”), Martin’s West LLC, an Indiana limited liability company (“Martin’s West”), 200 Elkhart Ave LLC, an Indiana limited liability company (“Elkhart Ave”), Martin’s Integrated Pharmacy Services LLC, an Indiana limited liability company (“Integrated Pharmacy”, and together with Parent, Stores Distribution, MDC, Associates, Family Fare, Seaway, Valley Farm, Gruber RE, Prevo, SPM, Spartan Fuel, Nash-Finch, Pique, Super Food, U Save, Hinky Dinky, GTL, Erickson’s, MDV, Caito, Logistics, SNP, MSM Holdco, MSM, MSM of Elkhart, MSM of Elkhart East, MSM of Logansport, MSM of Niles, MSM of Nappanee, MSM of St. Joseph, MSM of Stevensville, Martin’s MO, County Development, Martin’s West and Elkhart Ave, each individually a “Borrower” and collectively, “Borrowers”), any Person that at any time becomes a party hereto as a guarantor (each individually a “Guarantor” and collectively, “Guarantors”), the parties hereto from time to time

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as lenders, whether by execution of this Agreement or an Assignment and Acceptance (each individually, a “Lender” and collectively, “Lenders”), Wells Fargo Capital Finance, LLC, a Delaware limited liability company, in its capacity as administrative and collateral agent for Lenders (in such capacity, “Administrative Agent”), Wells Fargo Bank, National Association, Bank of America, N.A. and Fifth Third Bank, as Joint Lead Arrangers and Joint Bookrunners (the “Arrangers”), Bank of America, N.A. and Fifth Third Bank, as

Syndication Agents, BMO Harris Bank, N.A., and U.S. Bank, National Association, as Documentation Agents.

WITNESSETH:

WHEREAS, Parent, Stores Distribution, MDC, Associates, Family Fare, Seaway, Valley Farm, Gruber RE, Prevo, SPM (the "Existing Spartan Borrowers"), Wells Fargo Capital Finance, LLC, successor by merger to Wachovia Capital Finance Corporation (Central), formerly known as Congress Financial Corporation (Central), in its capacity as administrative and collateral agent for the lenders party thereto (in such capacity, the "Existing Spartan Agent"), and the lenders party thereto (the "Existing Spartan Lenders") are parties to the Loan and Security Agreement, dated December 23, 2003, as amended by Amendment No. 1 to Loan and Security Agreement, dated as of July 29, 2004, Amendment No. 2 to Loan and Security Agreement, dated as of December 22, 2004, Amendment No. 3 to Loan and Security Agreement, dated as of December 9, 2005, Amendment No. 4 to Loan and Security Agreement, dated as of March 17, 2006, Amendment No. 5 to Loan and Security Agreement, dated as of April 5, 2007, Amendment No. 6 to Loan and Security Agreement, dated as of May 22, 2007, Amendment No. 7 to Loan and Security Agreement, dated as of May 20, 2009, Amendment No. 8 to Loan and Security Agreement, dated as of May 4, 2010, Amendment No. 9 to Loan and Security Agreement, dated September 30, 2010, Amendment No. 10 to Loan and Security Agreement, dated July 19, 2011, Amendment No. 11 to Loan and Security Agreement, dated June 8, 2012 and Amendment No. 12 to Loan and Security Agreement, dated December 4, 2012 (as so amended, the "Existing Spartan Credit Agreement"), pursuant to which the Existing Spartan Lenders (or Existing Spartan Agent on behalf of Existing Spartan Lenders) have made loans (the "Existing Spartan Loans") and arranged to be issued letters of credit (the "Existing Spartan Letters of Credit") to or for the account of Existing Spartan Borrowers;

WHEREAS, Nash-Finch, Pique, Super Food, U Save, Hinky Dinky, GTL, Erickson's, Grocery Supply, HD Falls City, Whitton (the "Existing Nash-Finch Borrowers"), Wells Fargo Capital Finance, LLC, in its capacity as administrative and collateral agent for the lenders party thereto (in such capacity, the "Existing Nash-Finch Agent"), and the lenders party thereto (the "Existing Nash-Finch Lenders") are parties to the Credit Agreement, dated as of December 21, 2011, as amended by Amendment No. 1 to Credit Agreement, dated as of November 27, 2012 and Amendment No. 2 to Credit Agreement, dated as of April 10, 2013 (as so amended, the "Existing Nash-Finch Credit Agreement" and together with the Existing Spartan Credit Agreement, collectively, the "Existing Credit Agreements"), pursuant to which the Existing Nash-Finch Lenders (or Existing Nash-Finch Agent on behalf of Existing Nash-Finch Lenders) have made loans (the "Existing Nash-Finch Loans") and arranged to be issued letters of credit (the "Existing Nash-Finch Letters of Credit" and together with the Existing Spartan Letters of Credit, collectively, the "Existing Letters of Credit") to or for the account of Existing Nash-Finch Borrowers;

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WHEREAS, in connection with the Nash-Finch Merger, Parent has formed a wholly-owned Subsidiary, SS Delaware, Inc., a Delaware corporation ("Merger Sub"), and, pursuant to the Nash-Finch Merger Agreement, upon the consummation of the Nash-Finch Merger, Nash-Finch will merge with and into Merger Sub with Nash-Finch as the surviving corporation;

WHEREAS, Borrowers and Guarantors have requested that Administrative Agent and Lenders amend and restate the Existing Credit Agreements and continue to make loans and provide other financial accommodations to Borrowers;

WHEREAS, Administrative Agent and Lenders have agreed to amend and restate the Existing Credit Agreements and each Lender (severally and not jointly) has agreed to make such loans and provide such financial accommodations to Borrowers on a prorata basis according to its Commitment (as defined below), in each case, on the terms and conditions set forth herein; and

WHEREAS, Administrative Agent is willing to act as agent for Lenders on the terms and conditions set forth herein and the other Financing Agreements;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the Existing Credit Agreements shall be (and hereby are) amended and restated as follows:

## SECTION 9. DEFINITIONS

For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

9.1 "Account Debtor" shall mean a person obligated on an Account, and including, without limitation, an account debtor as such term is defined in the UCC, Credit Card Issuer, Credit Card Processor, Fiscal Intermediary or other Third Party Payor.

9.2 "Accounts" shall mean, as to each Borrower and Guarantor, all present and future rights of such Borrower and Guarantor to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card. The term "Accounts" as used herein shall include, without limitation, Credit Card Receivables, health-care-insurance receivables and any payments arising under or in connection with any coupon clearing arrangement.

9.3 "Adjusted Daily Simple SOFR" means, for any day (a "Simple SOFR Rate Day"), a rate per annum equal to the greater of (a) the sum of (i) SOFR for the day (such day, a "Simple SOFR Determination Day") that is five (5) U.S. Government Securities Business Days prior to (A) if such Simple SOFR Rate Day is a U.S. Government Securities Business Day, such Simple SOFR Rate Day or (B) if such Simple SOFR Rate Day is not a U.S. Government

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Securities Business Day, the U.S. Government Securities Business Day immediately preceding such Simple SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website; provided that if by 5:00 p.m. on the second (2nd) U.S. Government Securities Business Day immediately following any Simple SOFR Determination Day, SOFR in respect of such Simple SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Adjusted Daily Simple SOFR has not occurred, then SOFR for such Simple SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website; provided further that SOFR as determined pursuant to this proviso shall be utilized for purposes of calculation of Adjusted Daily Simple SOFR for no more than three (3) consecutive Simple SOFR Rate Days and (ii) the Simple SOFR Adjustment and (b) the Floor. Any

change in Adjusted Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to any Borrower.

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

9.5 "Administrative Agent" shall mean Wells Fargo Capital Finance, LLC, in its capacity as administrative agent on behalf of the Lenders and as collateral agent on behalf of the Secured Parties pursuant to the terms hereof and any replacement or successor agent hereunder.

9.6 "Administrative Agent Payment Account" shall mean account no. 5000000030266 of Administrative Agent at Wells Fargo Bank, National Association, or such other account of Administrative Agent as Administrative Agent may from time to time designate to Lead Borrower as the Administrative Agent Payment Account for purposes of this Agreement and the other Financing Agreements.

9.7 "Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

9.8 "Affiliate" shall mean, with respect to a specified Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (a) any Person which beneficially owns or holds twenty (20%) percent or more of any class of Voting Stock of such Person or other equity interests in such Person, (b) any Person of which such Person beneficially owns or holds twenty (20%) percent or more of any class of Voting Stock or in which such Person beneficially owns or holds twenty (20%) percent or more of the equity interests and (c) any director or executive officer of such Person. For the purposes of this definition, the term "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise.

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9.9 "Amendment No. 1" shall mean Amendment No. 1 to Amended and Restated Loan and Security Agreement, dated January 9, 2015, by and among Borrowers, Guarantors, Administrative Agent and Lenders, as amended, modified, supplemented, extended, renewed, restated or replaced.

9.10 "Amendment No. 2" shall mean Amendment No. 2 to Amended and Restated Loan and Security Agreement, dated December 20, 2016, by and among Borrowers, Guarantors, Administrative Agent and Lenders, as amended, modified, supplemented, extended, renewed, restated or replaced.

9.11 "Amendment No. 3" shall mean Amendment No. 3 to Amended and Restated Loan and Security Agreement, dated as of November 21, 2017, by and among Borrowers, Guarantors, Administrative Agent and Lenders, as amended, modified, supplemented, extended, renewed, restated or replaced.

9.12 "Amendment No. 4" shall mean Amendment No. 4 to Amended and Restated Loan and Security Agreement, dated as of December 18, 2018, by and among Borrowers, Guarantors, Administrative Agent and Lenders, as amended, modified, supplemented, extended, renewed, restated or replaced.

9.13 "Amendment No. 5" shall mean Amendment No. 5 to Amended and Restated Loan and Security Agreement, dated March 22, 2019, by and among Borrowers, Guarantors, Administrative Agent and Lenders, as amended, modified, supplemented, extended, renewed, restated or replaced.

9.14 "Amendment No. 6" shall mean Amendment No. 6 to Amended and Restated Loan and Security Agreement, dated November 17, 2022, by and among Borrowers, Guarantors, Administrative Agent and Lenders, as amended, modified, supplemented, extended, renewed, restated or replaced.

9.15 "Amendment No. 6 Effective Date" shall mean November 17, 2022.

9.16 "Anti-Corruption Laws" shall mean the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery, money laundering or corruption in any jurisdiction in which any Borrower, any Guarantor or any of its or their respective Subsidiaries or Affiliates is located or is doing business. For purposes hereof, "FCPA" shall mean the Foreign Corrupt Practices Act of 1977 (15 U.S.C. §78dd-1, et seq.), as the same now exists or may hereafter from time to time be amended, modified, recodified or supplemented, together with all rules and regulations thereunder.

9.17 "Anti-Money Laundering Laws" shall mean the applicable laws or regulations in any jurisdiction in which any Borrower, any Guarantor or any of its or their respective Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

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9.18 "Applicable Margin" means, at any time, as to the interest rate for Base Rate Loans and the interest rate for SOFR Rate Loans the applicable percentage (on a per annum basis) set forth below if the Monthly Average Excess Availability for the immediately preceding calendar month is at or within the amounts indicated for such percentage:

Tier	Monthly Average Excess Availability	Applicable SOFR Rate Margin for Tranche A Revolving Loans	Applicable SOFR Rate Margin for Tranche A-1 Revolving Loans	Applicable Base Rate Margin for Tranche A Revolving Loans	Applicable Base Rate Margin for Tranche A-1 Revolving Loans
1	Greater than 60% of the Maximum Credit	1.25%	2.25%	.25%	1.25%
2	Less than or equal to 60% of the Maximum Credit	1.50%	2.50%	.50%	1.50%

provided, that, the Applicable Margin shall be calculated and established once each calendar month based on the Monthly Average Excess Availability for the immediately preceding calendar month and shall remain in effect until adjusted thereafter as of the first day of the next month. In the event that at any time after the end of a calendar

month the Monthly Average Excess Availability for such calendar month used for the determination of the Applicable Margin is determined by Administrative Agent to have been greater or less than the actual amount of the Monthly Average Excess Availability for such calendar month, the Applicable Margin for such prior calendar month shall be adjusted to the applicable percentage based on such actual Monthly Average Excess Availability and, as applicable, any additional interest for the applicable period as a result of such recalculation shall be promptly paid to Administrative Agent, or any excess payment of interest for the applicable period as a result of such recalculation shall be promptly reimbursed to Borrowers by Administrative Agent.

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

9.20 “Arrangers” shall mean, collectively, Wells Fargo Bank, National Association, Bank of America, N.A. and Fifth Third Bank, in their capacities as Joint Lead Arrangers and Joint Bookrunners; each sometimes being referred to herein individually as an “Arranger”.

9.21 “Assignment and Acceptance” shall mean an Assignment and Acceptance substantially in the form of Exhibit A attached hereto (with blanks appropriately completed)

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delivered to Administrative Agent in connection with an assignment of a Lender’s interest hereunder in accordance with the provisions of Section 13.7 hereof.

9.22 “Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 3.4.

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

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

9.25 “Bank of America” shall mean Bank of America, N.A., a national banking association, and its successors and assigns.

9.26 “Bank Product Provider” shall mean any Lender or Affiliate of Lender that provides any Bank Products to Borrowers or Guarantors.

9.27 “Bank Products” shall mean any one or more of the following types or services or facilities provided to a Borrower or a Guarantor by a Bank Product Provider: (a) credit cards, debit cards or stored value cards or the processing of credit card, debit card or stored value card sales or receipts, (b) purchase cards (including so-called “procurement cards” or “P-cards”), (c) cash management or related services, including (i) the automated clearinghouse transfer of funds for the account of a Borrower pursuant to agreement or overdraft for any accounts of Borrowers maintained at Administrative Agent or any Bank Product Provider that are subject to the control of Administrative Agent pursuant to any Deposit Account Control Agreement to which Administrative Agent or such Bank Product Provider is a party, as applicable, (ii) controlled disbursement services, and (iii) card-based accounts payable payment services and (d) Hedge Agreements if and to the extent permitted hereunder.

9.28 “Base Rate” shall mean the greatest of (a) the Federal Funds Rate plus one-half of one (½%) percent, (b) Term SOFR for a one month tenor in effect on such day, plus 1%,

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provided that this clause (b) shall not be applicable during any period in which Term SOFR is unavailable or unascertainable, and (c) the rate of interest announced, from time to time, within Wells Fargo Bank, National Association at its principal office in San Francisco as its “prime rate”, subject to each increase or decrease in such “prime rate”, with the understanding that the “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero).

9.29 “Base Rate Loans” shall mean any Loans or portion thereof on which interest is payable based on the Base Rate in accordance with the terms thereof. All Swing Line Loans shall be Base Rate Loans.

9.30 “Benchmark” means, initially, Adjusted Daily Simple SOFR or the Term SOFR Reference Rate, as applicable; provided that if a Benchmark Transition Event has occurred with respect to Adjusted Daily Simple SOFR, the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.4(a).

9.31 “Benchmark Replacement” means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Lead Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement shall be deemed to be the Floor for the purposes of this Agreement and the other Financing Agreements.

9.32 “Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for

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

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

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

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased

or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

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

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

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

9.36 "Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Agreement in accordance with [Section 3.4](#) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Agreement in accordance with [Section 3.4](#).

9.37 "Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

9.38 "Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

9.39 "BHC Act Affiliate" of a Person means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such Person.

9.40 "Blocked Accounts" shall have the meaning set forth in [Section 6.3](#) hereof.

9.41 "Borrowing Base Certificate" shall mean a certificate substantially in the form of [Exhibit B](#) hereto, as such form may from time to time be modified by Administrative Agent, which is duly completed (including all schedules thereto) and executed by the chief financial officer, vice president of finance, treasurer, corporate treasurer, or controller of Parent and delivered to Administrative Agent.

9.42 "Business Day" means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.

9.43 "Capital Expenditures" shall mean with respect to any Person for any period the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are recorded on the statement of cash flows as purchases of property and equipment.

9.44 “Capital Leases” shall mean, as applied to any Person, any lease of (or any agreement conveying the right to use) any property (whether real, personal or mixed) by such

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Person as lessee which in accordance with GAAP, is required to be reflected as a liability on the balance sheet of such Person.

9.45 “Capital Stock” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person’s capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).

9.46 “Cash Dominion Event” shall mean at any time (a) an Event of Default shall exist or have occurred and be continuing or (b) Excess Availability is less than ten (10%) percent of the Maximum Credit for any two (2) consecutive Business Days or is less than seven and one-half (7.5%) percent of the Maximum Credit on any day; provided, that, (ii) to the extent that the Cash Dominion Event has occurred due to clause (b) of this definition, if Excess Availability shall be equal to or greater than ten (10%) percent of the Maximum Credit for not less than ninety (90) consecutive days, the Cash Dominion Event shall no longer be deemed to exist or be continuing until such time as Excess Availability may again be less than such amount and (iii) a Cash Dominion Event may not be cured as contemplated by clause (i) more than two (2) times in any fiscal year or more than four (4) times during the term of the Credit Facility.

9.47 “Cash Equivalents” shall mean, at any time, (a) any evidence of Indebtedness with a maturity date of ninety (90) days or less issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof; (b) certificates of deposit or bankers’ acceptances with a maturity of ninety (90) days or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$250,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of ninety (90) days or less issued by a corporation (except an Affiliate of any Borrower or Guarantor) organized under the laws of any State of the United States of America or the District of Columbia and rated at least A-1 by Standard & Poor’s Ratings Service, a division of The McGraw-Hill Companies, Inc. or at least P-1 by Moody’s Investors Service, Inc.; (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any financial institution having combined capital and surplus and undivided profits of not less than \$250,000,000; (e) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any governmental agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within ninety (90) days or less from the date of acquisition; provided, that, the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985; and (f) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the types described in clauses (a) through (e) above.

9.48 “Cash Surrender Value” shall mean the amount of cash that the Life Insurance Company will pay the holder of the Life Insurance Policy upon cancellation or

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certified by the Life Insurance Company, as evidenced in writing from time to time by a Life Insurance Company acceptable to Administrative Agent in form and substance satisfactory to Administrative Agent.

9.49 "Certificates of Title" shall mean any certificates of title, certificates of ownership or any other registration certificates issued under the laws of any State or Commonwealth of the United States of America or any political subdivision thereof with respect to motor vehicles or other vehicles.

9.50 "Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority, (c) any new, or adjustment to, requirements prescribed by the FRB for "Eurocurrency Liabilities" (as defined in Regulation D of the FRB), requirements imposed by the Federal Deposit Insurance Corporation, or similar requirements imposed by any domestic or foreign governmental authority or resulting from compliance by the Administrative Agent or any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority and related in any manner to Adjusted Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or (d) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

9.51 "Change of Control" shall mean (a) the transfer (in one transaction or a series of transactions) of all or substantially all of the assets of any Borrower or Guarantor to any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than as permitted in Section 9.7 hereof; (b) the liquidation or dissolution of any Borrower or Guarantor or the adoption of a plan by the stockholders of any Borrower or Guarantor relating to the dissolution or liquidation of such Borrower or Guarantor, other than as permitted in Section 9.7 hereof; (c) the acquisition by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), of beneficial ownership, directly or indirectly, of more than thirty (30%) percent of the voting power of the total outstanding Voting Stock of Parent; (d) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Parent (together with any new directors whose nomination for election or election was approved by a vote of at least a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of Parent then still in office; (e) the failure of Parent to own directly or indirectly one hundred (100%) percent of the voting power of the total outstanding Voting Stock of any other Borrower or Guarantor (except to the extent resulting from mergers, consolidations, liquidations or dissolutions permitted under Section 9.7 hereof); or (f) the occurrence of any "change in control"

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(or similar term) as defined in the Senior Note Indenture or in the documents governing the Qualified Debt Offering.

9.52 "Code" shall mean the Internal Revenue Code of 1986, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

9.53 "Collateral" shall have the meaning set forth in Section 5 hereof.

9.54 "Collateral Access Agreement" shall mean an agreement in writing, in form and substance satisfactory to Administrative Agent, by any lessor of premises to any Borrower or Guarantor, or any other person to whom any Collateral is consigned or who has custody, control or possession of any such Collateral or is otherwise the owner or operator of any premises on which any of such Collateral is located, in favor of Administrative Agent with respect to the collateral located at such premises or otherwise in the custody, control or possession of such person.

9.55 "Collateral Assignment of Life Insurance Policies" shall mean, in form and substance satisfactory to Administrative Agent, the Collateral Assignment of Life Insurance Policies, as may be delivered after the date of Amendment No. 4, between Borrowers and Administrative Agent with respect to each of the Life Insurance Policies, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced.

9.56 "Commitments" shall mean, collectively, the Tranche A Commitment, and the Tranche A-1 Commitments; sometimes being individually referred to herein as a "Commitment".

9.57 "Conforming Changes" means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.4 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Financing Agreements).

9.58 "Consolidated Net Income" shall mean, with respect to any Person for any period, the aggregate of the net income (loss) of such Person and its Subsidiaries, on a consolidated basis, for such period (and as to Borrowers and Guarantors, excluding to the extent

included therein (i) any extraordinary, one-time or non-recurring gains, (ii) extraordinary, one-time or non-recurring non-cash losses or charges, and (iii) operations that have been discontinued on or before the Effective Date), and after deducting the Provision for Taxes for such period, all as determined in accordance with GAAP; provided, that, (a) the net income of any Person that is not a wholly-owned Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid or payable to such Person or a wholly-owned Subsidiary of such Person; (b) except to the extent included pursuant to the foregoing clause, the net income of any Person accrued prior to the date it becomes a wholly-owned Subsidiary of such Person or is merged into or consolidated with such Person or any of its wholly-owned Subsidiaries or that Person's assets are acquired by such Person or by any of its wholly-owned Subsidiaries shall be excluded; (c) the effect of any change in accounting principles adopted by such Person or its Subsidiaries after the Effective Date shall be excluded; (d) net income shall exclude interest accruing, but not paid on indebtedness owing to a Subsidiary or parent corporation of such Person; and (e) the net income (if positive) of any wholly-owned Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such wholly-owned Subsidiary to such Person or to any other wholly-owned Subsidiary of such Person is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such wholly-owned Subsidiary shall be excluded. For the purposes of this definition, net income excludes any gain and non-cash loss together with any related Provision for Taxes for such gain and non-cash loss realized upon the sale or other disposition of any assets that are not sold in the ordinary course of business (including, without limitation, dispositions pursuant to sale and leaseback transactions and for this purpose sales or other dispositions of retail store locations or distribution centers shall not be deemed to be in the ordinary course of the business of Borrowers and Guarantors) or of any Capital Stock of such Person or a Subsidiary of such Person and any net income or non-cash loss realized as a result of changes in accounting principles or the application thereof to such Person.

9.59 "Covered Party" has the meaning specified in [Section 13.12](#).

9.60 "Credit Card Acknowledgments" shall mean, collectively, the agreements by Credit Card Issuers or Credit Card Processors who are parties to Credit Card Agreements in favor of Administrative Agent acknowledging Administrative Agent's first priority security interest, in the monies due and to become due to a Borrower or Guarantor (including, without limitation, credits and reserves) under the Credit Card Agreements, and agreeing to transfer all such amounts to the Blocked Accounts, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced; sometimes being referred to herein individually as a "Credit Card Acknowledgment".

9.61 "Credit Card Agreements" shall mean all agreements now or hereafter entered into by any Borrower or any Guarantor for the benefit of any Borrower, in each case with any Credit Card Issuer or any Credit Card Processor, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, including, but not limited to, the agreements set forth on Schedule 8.16 hereto.

9.62 "Credit Card Issuer" shall mean any person (other than a Borrower or Guarantor) who issues or whose members issue credit cards, including, without limitation, MasterCard or

VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc. or Discover Financial Services, Inc.

9.63 “Credit Card Processor” shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower’s or Guarantor’s sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

9.64 “Credit Card Receivables” shall mean, collectively, (a) each “payment intangible” (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Loan Party resulting from charges by a customer of a Loan Party on credit or debit cards issued by such Credit Card Issuer in connection with the sale of goods by a Loan Party, or services performed by a Loan Party, in each case in the ordinary course of its business, (b) all present and future rights of any Borrower or Guarantor to payment from any Credit Card Issuer, Credit Card Processor or other third party arising from sales of goods or rendition of services to customers who have purchased such goods or services using a credit card or debit card and (c) all present and future rights of any Borrower or Guarantor to payment from any Credit Card Issuer, Credit Card Processor or other third party in connection with the sale or transfer of Accounts arising pursuant to the sale of goods or rendition of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Credit Card Issuer or Credit Card Processor under the Credit Card Agreements or otherwise.

9.65 “Credit Facility” shall mean the Loans and Letter of Credit Accommodations provided to or for the benefit of any Borrower pursuant to Sections 2.1, 2.2, 2.3 and 2.4 hereof.

9.66 “Customer Credit Liabilities” shall mean at any time, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards of Borrowers and Guarantors entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits and customer deposits of Borrowers and Guarantors.

9.67 “Daily Simple SOFR Loan” means a Loan that bears interest at a rate determined by reference to Adjusted Daily Simple SOFR.

9.68 “Default” shall mean an act, condition or event which with notice or passage of time or both would constitute an Event of Default.

9.69 “Defaulting Lender” shall have the meaning set forth in Section 6.10 hereof.

9.70 “Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

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9.71 “Deposit Account Control Agreement” shall mean an agreement in writing, in form and substance satisfactory to Administrative Agent, by and among Administrative Agent, the Borrower or Guarantor with a deposit account at any bank and the bank at which such deposit account is at any time maintained which provides that such bank will comply with instructions originated by Administrative Agent directing disposition of the

funds in the deposit account without further consent by such Borrower or Guarantor and has such other terms and conditions as Administrative Agent may require.

9.72 [Reserved].

9.73 "Distribution Division" shall mean the operations of Parent, Associates, Stores Distribution, Valley Farm, MDC, Nash-Finch, Pique, Super Food and GTL (together with their respective successors and assigns) consisting of (a) distribution of groceries, produce, dairy products, meat, deli, bakery, frozen food, seafood, floral products, general merchandise, pharmacy and health and beauty care items, including, but not limited to, distribution of private brand grocery and general merchandise to independent grocery and convenience stores as well as grocery stores, pharmacies, convenience stores and fuel centers owned by Borrowers or any of their Subsidiaries and (b) providing various services to independent distribution customers.

9.74 "EBITDA" shall mean, as to any Person, with respect to any period, an amount equal to: (a) the Consolidated Net Income of such Person and its Subsidiaries for such period, plus (b) depreciation and amortization plus (c) Interest Expense and non-operating income or expense for such period (to the extent deducted in the computation of Consolidated Net Income of such Person), plus (d) the Provision for Taxes for Federal and State income taxes for such period (to the extent deducted in the computation of Consolidated Net Income of such Person), plus (e) all charges with respect to the Michigan Corporate Income Tax as levied by the Michigan Department of Treasury or any replacement taxes thereof for such period (to the extent deducted in the computation of Consolidated Net Income for such Person), plus (f) other cash and non-cash charges associated with restructuring and exit costs, asset impairments, and other items detailed as non-GAAP adjustments as reported in a Form 10-K or a Form 10-Q of Parent filed with the Securities and Exchange Commission for such period (to the extent deducted in the computation of Consolidated Net Income of such Person), minus (g) non-recurring gains or income similarly reported as non-GAAP adjustments in a Form 10-K or a Form 10-Q.

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

9.76 "EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

9.77 "EEA Resolution Authority" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

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9.78 "Eligible Accounts" shall mean Accounts (other than Credit Card Receivables and Military Receivables but including Medicare Accounts, Medicaid Accounts and Accounts arising under any coupon clearing arrangement) created by a Borrower which are and continue to be acceptable to Administrative Agent in good faith based on the criteria set forth below. In general, Accounts shall be Eligible Accounts if:

(a) such Accounts arise from the actual and bona fide sale and delivery of goods by such Borrower or rendition of services by such Borrower in the ordinary

course of its business which transactions are completed in accordance with the terms and provisions contained in any documents related thereto;

(b) such Accounts are not unpaid (i) for Accounts with stated terms of fifteen (15) days or greater, more than sixty (60) days after the original due date thereof or more than ninety (90) days after the original invoice or statement date (as applicable), provided, that, Accounts which are unpaid more than ninety (90) days after the original invoice or statement date may be eligible so long as (A) such Accounts are not unpaid more than one hundred eighty (180) days from the original invoice or statement date, (B) no more than \$3,000,000 of such Accounts may be Eligible Accounts at any time and (C) such Accounts are not unpaid after the original due date thereof or (ii) for Accounts with stated terms of less than fifteen (15) days, more than thirty (30) days after the original due date thereof or more than ninety (90) days after the original invoice or statement date (as applicable) (it being understood that the statement date is applicable to Accounts of the Distribution Division);

(c) such Accounts comply with the terms and conditions contained in Section 7.2(b) of this Agreement;

(d) such Accounts do not arise from sales on consignment, guaranteed sale, sale and return, sale on approval, or other terms under which payment by the Account Debtor may be conditional or contingent;

(e) the chief executive office of the Account Debtor with respect to such Accounts is located in the United States of America or Canada (provided, that, at any time promptly upon Administrative Agent's request, such Borrower shall execute and deliver, or cause to be executed and delivered, such other agreements, documents and instruments as may be required by Administrative Agent to perfect the security interests of Administrative Agent in those Accounts of an Account Debtor with its chief executive office or principal place of business in Canada in accordance with the applicable laws of the Province of Canada in which such chief executive office or principal place of business is located and take or cause to be taken such other and further actions as Administrative Agent may request to enable Administrative Agent as secured party with respect thereto to collect such Accounts under the applicable Federal or Provincial laws of Canada) or, at Administrative Agent's option, if the chief executive office and principal place of business of the Account Debtor with respect to such Accounts is located other than in the United States of America or Canada, then if either: (i) the Account Debtor has delivered to such Borrower an irrevocable letter of credit issued or confirmed by a bank satisfactory to Administrative Agent and payable only in the United States of America and in U.S. dollars, sufficient to cover such Account, in form and substance satisfactory to Administrative Agent and if required by Administrative Agent, the original of such letter of

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credit has been delivered to Administrative Agent or Administrative Agent's agent, and such Borrower has complied with the terms of Section 5.2(h) hereof with respect to the assignment of the proceeds of such letter of credit to Administrative Agent or naming Administrative Agent as transferee beneficiary thereunder, as Administrative Agent may specify, or (ii) such Account is subject to credit insurance payable to Administrative Agent issued by an insurer and on terms and in an amount acceptable to Administrative Agent, provided, that, the aggregate amount of such Accounts that may be Eligible Accounts shall not exceed \$7,500,000 at any time or (iii) such Account is otherwise acceptable in all respects to Administrative Agent (subject to such lending formula with respect thereto as Administrative Agent may determine);

(f) such Accounts do not consist of progress billings (such that the obligation of the Account Debtors with respect to such Accounts is conditioned upon such Borrower's satisfactory completion of any further performance under the agreement giving rise thereto), bill and hold invoices or retainage invoices, except as to bill and hold invoices, if Administrative Agent shall have received an agreement in writing from the Account Debtor, in form and substance satisfactory to Administrative Agent, confirming the unconditional obligation of the Account Debtor to take the goods related thereto and pay such invoice;

(g) the Account Debtor with respect to such Accounts has not asserted a counterclaim, defense or dispute and is not owed any amounts that may give rise to any right of setoff or recoupment against such Accounts (but the portion of the Accounts of such Account Debtor in excess of the amount at any time and from time to time owed by such Borrower to such Account Debtor or claimed owed by such Account Debtor may be deemed Eligible Accounts),

(h) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Accounts;

(i) such Accounts are subject to the first priority, valid and perfected security interest of Administrative Agent and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any liens except those permitted in this Agreement that are subject to an intercreditor agreement in form and substance satisfactory to Administrative Agent between the holder of such security interest or lien and Administrative Agent;

(j) neither the Account Debtor nor any officer or employee of the Account Debtor with respect to such Accounts is an officer, employee, agent or other Affiliate of any Borrower or Guarantor, except that up to \$10,000,000 of Accounts at any time due from an Account Debtor that is an Affiliate but is not an individual or a Borrower or Guarantor or a Subsidiary of a Borrower or Guarantor which Account arises in the ordinary course of business and on an arms-length basis on the same terms and conditions as for a receivable due from an unaffiliated company and without any special consideration may be Eligible Accounts;

(k) the Account Debtors with respect to such Accounts are not any foreign government, the United States of America, any State, political subdivision, department, agency or instrumentality thereof, unless, if the Account Debtor is the United States of America, any State, political subdivision, department, agency or instrumentality thereof, upon Administrative Agent's request, the Federal Assignment of Claims Act of 1940, as amended or any similar State

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or local law, if applicable, has been complied with in a manner satisfactory to Administrative Agent or except as to Medicaid Accounts, Medicare Accounts and Accounts arising from WIC, Supplemental Nutrition Assistance Program or other food stamp programs, such Accounts otherwise constitute Eligible Accounts hereunder;

(l) there are no proceedings or actions which are threatened or pending against the Account Debtors with respect to such Accounts which might result in any material adverse change in any such Account Debtor's financial condition (including, without limitation, any bankruptcy, dissolution, liquidation, reorganization or similar proceeding);

(m) (i) the aggregate amount of such Accounts owing by a single Account Debtor that is not an Investment Grade Account Debtor do not constitute more than

twenty (20%) percent of the aggregate amount of all otherwise Eligible Accounts and Eligible Military Receivables of Borrowers, and (ii) the aggregate amount of such Accounts owing by a single Investment Grade Account Debtor do not constitute more than twenty-five (25%) percent of the aggregate amount of all otherwise Eligible Accounts and Eligible Military Receivables of Borrowers (but, in each case, the portion of such Accounts not in excess of the applicable percentages may be deemed Eligible Accounts);

(n) such Accounts are not owed by an Account Debtor who has Accounts unpaid (i) for Accounts with stated terms of fifteen (15) days or greater, more than sixty (60) days after the original due date thereof or more than ninety (90) days after the original invoice or statement date (as applicable) or (ii) for Accounts with stated terms of less than fifteen (15) days, more than thirty (30) days after the original due date thereof or more than ninety (90) days after the original invoice or statement date (as applicable), in any case which constitute more than fifty (50%) percent of the total Accounts of such Account Debtor (it being understood that the statement date is applicable to Accounts of the Distribution Division);

(o) the Account Debtor is not located in a state requiring the filing of a Notice of Business Activities Report or similar report in order to permit such Borrower to seek judicial enforcement in such State of payment of such Account, unless such Borrower has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year or such failure to file and inability to seek judicial enforcement is capable of being remedied without any material delay or material cost;

(p) such Accounts are owed by Account Debtors whose total indebtedness to such Borrower does not exceed the credit limit with respect to such Account Debtors as determined by such Borrower from time to time, to the extent such credit limit as to any Account Debtor is established consistent with the current practices of such Borrower as of the Effective Date and such credit limit is acceptable to Administrative Agent (but the portion of the Accounts not in excess of such credit limit may be deemed Eligible Accounts);

(q) the collection of such Accounts are not, in Administrative Agent's good faith discretion, believed to be doubtful, including by reason of the Account Debtors financial condition;

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(r) as to Medicaid Accounts, (i) the claim for reimbursement related to such Account has been submitted to the appropriate Fiscal Intermediary in accordance with the applicable regulations under Medicaid within thirty (30) days from the date the claim arose, (ii) the person to whom the goods were sold is an eligible Medicaid beneficiary at the time such goods are sold and such eligibility has been verified by the Borrower making such sale, (iii) such Account is owed to a Borrower who is not under any investigation (other than the periodic audits conducted by a Fiscal Intermediary in the ordinary course of business) or subject to any action or proceeding concerning the status of such Borrower as a Certified Medicaid Provider and/or the payments under Medicaid to such Borrower have not been contested, suspended, delayed, deferred or otherwise postponed due to any investigation, action or proceeding by the U.S. Justice Department or any other Governmental Authority, (iv) the amount of such Account does not exceed the amounts to which the Borrower making such sale is entitled to reimbursement for such eligible Medicaid beneficiary under applicable Medicaid regulations (provided, that, to the extent that the amount of any such excess is de

minimis, the portion of the Account not in excess of the reimbursable amount may be deemed an Eligible Account); (v) all authorization and billing procedures and documentation required in order for the Borrower making such sale to be reimbursed and paid on such Account by the Fiscal Intermediary have been properly completed and satisfied to the extent required in order for such Borrower to be so reimbursed and paid and (vi) the terms of the sale giving rise to such Accounts and all practices of such Borrower and Guarantors with respect to such Accounts comply in all material respects with applicable Federal, State, and local laws and regulations; provided, that, in no event shall the aggregate amount of Medicaid Accounts, Medicare Accounts and Accounts arising from WIC, Supplemental Nutrition Assistance Program or other food stamp programs that are deemed to be Eligible Accounts (but without limitation as to the amount of such Accounts) exceed \$7,500,000 or such higher amount (not to exceed \$12,500,000) as Administrative Agent may agree in writing;

(s) as to Medicare Accounts, (i) the claim for reimbursement related to such Account has been submitted to the appropriate Fiscal Intermediary in accordance with the applicable regulations under Medicare within thirty (30) days from the date the claim arose, (ii) the person to whom the goods were sold is an eligible Medicare beneficiary at the time such goods are sold and such eligibility has been verified by the Borrower making such sale, (iii) such Account is owed to a Borrower who is not under any investigation (other than the periodic audits conducted by a Fiscal Intermediary in the ordinary course of business) or subject to any action or proceeding concerning the status of such Borrower as a Certified Medicare Provider and/or the payments under Medicare to such Borrower have not been contested, suspended, delayed, deferred or otherwise postponed due to any investigation, action or proceeding by the U.S. Justice Department or any other Governmental Authority, (iv) the amount of such Account does not exceed the amounts to which the Borrower making such sale is entitled to reimbursement for such eligible Medicare beneficiary under applicable Medicare regulations (provided, that, to the extent that the amount of any such excess is de minimis, the portion of the Account not in excess of the reimbursable amount may be deemed an Eligible Account); (v) all authorization and billing procedures and documentation required in order for the Borrower making such sale to be reimbursed and paid on such Account by the Fiscal Intermediary have been properly completed and satisfied to the extent required for such Borrower to be so reimbursed and paid, and (vi) the terms of the sale giving rise to such Accounts and all practices of such Borrower and Guarantors

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with respect to such Accounts comply in all material respects with applicable Federal, State, and local laws and regulations; provided, that, in no event shall the aggregate amount of Medicaid Accounts, Medicare Accounts and Accounts arising from WIC, Supplemental Nutrition Assistance Program or other food stamp programs that are deemed to be Eligible Accounts (but without limitation as to the amount of such Accounts) exceed \$7,500,000 or such higher amount (not to exceed \$12,500,000) as Administrative Agent may agree in writing;

(t) Accounts arising under any coupon clearing arrangements between a Borrower and a third party, provided, that, the aggregate amount of such Accounts that may be Eligible Accounts shall not exceed \$1,000,000 at any time;

(u) as to Accounts where the Account Debtor is a Third Party Payor (other than for Medicare Accounts and Medicaid Accounts), (i) the Borrower making the sale giving rise to such Account has a valid and enforceable agreement with the Third Party Payor providing for payment to such Borrower or such Borrower is otherwise entitled to

payment under the terms of its arrangements with the insurance company that is the Third Party Payor, and such agreement and arrangements are in full force and effect and there is no default thereunder that would be a basis for such Third Party Payor to cease or suspend any payments to such Borrower (including any deductions, setoffs or defenses), (ii) the goods sold giving rise to such Account are of the type that are covered under the agreement or arrangements with the Third Party Payor and the party receiving such goods is entitled to coverage under such agreement or arrangement, (iii) the Borrower making the sale giving rise to such Account has contacted the Third Party Payor or otherwise received confirmation from such Third Party Payor that the party receiving the goods is entitled to coverage under the terms of the agreement with such Third Party Payor and the Borrower is entitled to reimbursement for such Account, (iv) the amount of such Account does not exceed the amounts to which the Borrower making such sale is entitled to reimbursement for the goods sold under the terms of such agreements or arrangements (provided, that, to the extent that the amount of any such excess is de minimis, the portion of the Account not in excess of the reimbursable amount may be deemed an Eligible Account), (v) there are no contractual or statutory limitations or restrictions on the rights of the Borrower making such sale to assign its rights to payment arising as a result thereof or to grant any security interest therein, (vi) all authorization and billing procedures and documentation required in order for the Borrower making such sale to be reimbursed and paid on such Account by the Third Party Payor have been properly completed and satisfied to the extent required for such Borrower to be so reimbursed and paid and (vii) the terms of the sale giving rise to such Accounts and all practices of such Borrower and Guarantors with respect to such Accounts comply in all material respects with applicable Federal, State, and local laws and regulations; and

(v) the Account Debtor with respect to such Accounts is not a Sanctioned Person or a Sanctioned Entity.

The criteria for Eligible Accounts set forth above may be revised from time to time by Administrative Agent in its good faith determination to address the results of any collateral and/or field examination performed by or on behalf of Administrative Agent after the Effective Date. Any Accounts that are not Eligible Accounts shall nevertheless be part of the Collateral.

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9.79 "Eligible Cash and Cash Equivalents" shall mean cash and cash equivalents of the Borrowers from time to time deposited in an account in the name of a Borrower maintained with a Lender or any Affiliate of a Lender (excluding any amounts on deposit in any account that is designated to hold cash collateral for Letter of Credit Accommodations, in the Administrative Agent Payment Account or in any other escrow, special purpose or restricted account, such as an account specifically designated for payroll or sales taxes) and subject to a Deposit Account Control Agreement or an Investment Property Control Agreement, as the case may be, in favor of the Administrative Agent (which Deposit Account Control Agreement or Investment Property Control Agreement provides that the Administrative Agent has sole control of the disposition of the amounts so deposited, whether or not a Cash Dominion Event exists), which account is subject to a first priority perfected security interest in favor of the Administrative Agent.

9.80 "Eligible Credit Card Receivables" shall mean, as to each Borrower, Credit Card Receivables of such Borrower which are and continue to be acceptable to Administrative Agent in good faith based on the criteria set forth below. Credit Card Receivables shall be Eligible Credit Card Receivables if:

(a) such Credit Card Receivables arise from the actual and bona fide sale and delivery of goods or rendition of services by such Borrower in the ordinary course of the business of such Borrower which transactions are completed in accordance with the terms and provisions contained in any agreements binding on such Borrower or the other party or parties related thereto;

(b) such Credit Card Receivables are not past due (beyond any stated applicable grace period, if any, therefor) pursuant to the terms set forth in the Credit Card Agreements with the Credit Card Issuer or Credit Card Processor of the credit card or debit card used in the purchase which give rise to such Credit Card Receivables;

(c) such Credit Card Receivables are not unpaid more than seven (7) days after the date of the sale of Inventory giving rise to such Credit Card Receivables;

(d) all material procedures required by the Credit Card Issuer or the Credit Card Processor of the credit card or debit card used in the purchase which gave rise to such Credit Card Receivables shall have been followed by such Borrower (including, but not limited to, obtaining any required authorization and approval by such Credit Card Issuer or Credit Card Processor for the sale giving rise to such Credit Card Receivables and submitting all materials required by the Credit Card Issuer or Credit Card Processor obligated in respect of such Credit Card Receivables in order for such Borrower to be entitled to payment in respect thereof) and all documents required for the authorization and approval by such Credit Card Issuer or Credit Card Processor shall have been obtained in connection with the sale giving rise to such Credit Card Receivables;

(e) such Credit Card Receivables comply with the applicable terms and conditions contained in Section 7.2 of this Agreement;

(f) the Credit Card Issuer or Credit Card Processor with respect to such Credit Card Receivables has not asserted a counterclaim, defense or dispute and does not have, and

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does not engage in transactions which may give rise to, any right of setoff against such Credit Card Receivables (other than setoffs to fees and chargebacks consistent with the practices of such Credit Card Issuer or Credit Card Processor with such Borrower as of the Effective Date or as such practices may change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstance of such Borrower), but the portion of the Credit Card Receivables owing by such Credit Card Issuer or Credit Card Processor in excess of the amount owing by such Borrower to such Credit Card Issuer or Credit Card Processor pursuant to such fees and chargebacks may be deemed Eligible Credit Card Receivables;

(g) the Credit Card Issuer or Credit Card Processor with respect to such Credit Card Receivables has not setoff against amounts otherwise payable by such Credit Card Issuer or Credit Card Processor to such Borrower for the purpose of establishing a reserve or collateral for obligations of such Borrower to such Credit Card Issuer or Credit Card Processor (notwithstanding that the Credit Card Issuer or Credit Card Processor may have setoffs for fees and chargebacks consistent with the practices of such Credit Card Issuer or Credit Card Processor with such Borrower as of the Effective Date or as such practices may hereafter change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstances of such Borrower);

(h) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Credit Card Receivables;

(i) such Credit Card Receivables are subject to the first priority, valid and perfected security interest and lien of Administrative Agent, for and on behalf of itself and Lenders, as to such Credit Card Receivables of such Borrower and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any security interest or lien in favor of any person other than Administrative Agent except as otherwise permitted in this Agreement, in each case subject to and in accordance with the terms and conditions applicable hereunder to any such permitted security interest or lien;

(j) the collection of such Credit Card Receivables are not, in Administrative Agent's good faith discretion, believed to be doubtful, including by reason of the financial condition of the Credit Card Issuer or Credit Card Processor related thereto;

(k) no event of default has occurred under the Credit Card Agreement of such Borrower with the Credit Card Issuer or Credit Card Processor who has issued the credit card or debit card or handles payments under the credit card or debit card used in the sale which gave rise to such Credit Card Receivables which event of default gives such Credit Card Issuer or Credit Card Processor the right to cease or suspend payments to such Borrower or any Guarantor and no event shall have occurred which gives such Credit Card Issuer or Credit Card Processor the right to setoff against amounts otherwise payable to such Borrower, including on behalf of a Guarantor (other than for then current fees and chargebacks consistent with the current practices of such Credit Card Issuer or Credit Card Processor as of the Effective Date or as such practices may thereafter change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstances of such Borrower or any Guarantor), except as may have been waived in writing on terms and conditions

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reasonably satisfactory to Administrative Agent pursuant to the Credit Card Acknowledgment by such Credit Card Issuer or Credit Card Processor) or the right to establish reserves or establish or demand collateral, and the Credit Card Issuer or Credit Card Processor has not sent any written notice of default and/or notice of its intention to cease or suspend payments to such Borrower in respect of such Credit Card Receivables or to establish reserves or cash collateral for obligations of such Borrower to such Credit Card Issuer or Credit Card Processor, and such Credit Card Agreements are otherwise in full force and effect and constitute the legal, valid, binding and enforceable obligations of the parties thereto; and

(l) the terms of the sale giving rise to such Credit Card Receivables and all practices of such Borrower and Guarantors with respect to such Credit Card Receivables comply in all material respects with applicable Federal, State, and local laws and regulations.

Credit Card Receivables which would otherwise constitute Eligible Credit Card Receivables pursuant to this Section will not be deemed ineligible solely by virtue of the Credit Card Agreements with respect thereto having been entered into by any Guarantor for the benefit of Borrowers. The criteria for Eligible Credit Card Receivables set forth above may be revised from time to time by Administrative Agent in its good faith determination to address the results of any collateral and/or field examination performed by or on behalf of Administrative Agent after the Effective Date. Any Credit

Card Receivables that are not Eligible Credit Card Receivables shall nevertheless be part of the Collateral.

9.81 "Eligible Equipment" shall mean, as to each Borrower, Equipment owned by such Borrower that is included in the initial appraisal of Equipment received by Administrative Agent after the Effective Date that satisfies the requirements of Section 7.4 hereof, which Equipment is in good order, repair, running and marketable condition (ordinary wear and tear excepted) and in each case acceptable to Administrative Agent in good faith based on the criteria set forth below. In general, Eligible Equipment shall not include: (a) Equipment at premises other than those owned or leased and controlled by any Borrower; (b) Equipment subject to a security interest or lien in favor of any person other than Administrative Agent except those permitted hereunder that are subject to an intercreditor agreement in form and substance satisfactory to Administrative Agent between the holder of such security interest or lien and Administrative Agent; (c) Equipment located outside the United States of America; (d) Equipment that is not subject to the first priority, valid and perfected security interest of Administrative Agent; (e) damaged or defective Equipment or Equipment not used or usable in the ordinary course of such Borrower's business as presently conducted, or (f) Equipment purchased from a Sanctioned Person. Any Equipment that is not Eligible Equipment shall nevertheless be part of the Collateral.

9.82 "Eligible In-Transit Inventory" shall mean, as of any date of determination thereof, without duplication of other Eligible Inventory, Inventory:

(a) which has been shipped within the continental United States or Canada for receipt by a Borrower at a location for Eligible Inventory within five (5) days of the date of determination, but which has not yet been delivered to such Borrower;

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(b) for which the purchase order is in the name of a Borrower and title has passed to such Borrower;

(c) for which the document of title reflects a Borrower as consignee or, if requested by the Administrative Agent after the occurrence of an Event of Default, names the Administrative Agent as consignee, and in each case as to which the Administrative Agent has control over the documents of title which evidence ownership of the subject Inventory (such as, if applicable and if requested by the Administrative Agent, by the delivery of a Freight Forwarder Agreement);

(d) which Administrative Agent determines is not subject to any Person's right of reclamation, repudiation, diversion or stoppage in transit;

(e) which is insured to the reasonable satisfaction of the Administrative Agent;

(f) which has not been in transit for more than ten (10) days; and

(g) which otherwise would constitute Eligible Inventory.

9.83 "Eligible Inventory" shall mean, as to each Borrower, Inventory of such Borrower consisting of finished goods held for resale in the ordinary course of the business of such Borrower, in each case which are acceptable to Administrative Agent in good faith based on the criteria set forth below. In general, Eligible Inventory shall not include (a) spare parts for equipment; (b) packaging and shipping materials; (c) supplies used or consumed in such Borrower's business; (d) Inventory at premises other than those owned or leased and controlled by any Borrower, except to the extent that Administrative Agent has received (i) any UCC financing statements or other documents

that Administrative Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (ii) a Collateral Access Agreement executed by the Person owning any such location on terms reasonably acceptable to Administrative Agent; (e) Inventory subject to a security interest or lien in favor of any Person other than Administrative Agent except those permitted in this Agreement that are subject to an intercreditor agreement in form and substance satisfactory to Administrative Agent between the holder of such security interest or lien and Administrative Agent; (f) bill and hold goods; (g) obsolete Inventory; (h) Inventory which is not subject to the first priority, valid and perfected security interest of Administrative Agent; (i) Inventory that is past the expiration date; (j) Inventory that is held for return to vendors (other than undamaged overstock allowed to be returned to a vendor under the return policy between a Borrower and the vendor that is on terms and conditions acceptable to Administrative Agent in good faith); (k) damaged and/or defective Inventory; (l) Inventory purchased or sold on consignment, (m) Inventory that is comprised of goods which are not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale (it being understood and agreed that Inventory consisting of a cigarette unit which does not have a Tax Stamp affixed thereto (i) shall otherwise be deemed eligible under this clause (m) so long as such Borrower owns a Tax Stamp that can be affixed to such cigarette unit for sales purposes and (ii) for advance purposes, shall be valued as a cigarette unit as to which no Tax Stamp is affixed thereto), (n) Inventory that has been acquired from a Sanctioned Person or a Sanctioned Entity, and (o) Inventory located outside the United States of America. The criteria for Eligible Inventory set forth above may be

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revised from time to time by Administrative Agent in its good faith determination to address the results of any collateral and/or field examination performed by or on behalf of Administrative Agent after the Effective Date. Any Inventory that is not Eligible Inventory shall nevertheless be part of the Collateral.

9.84 "Eligible Life Insurance Policies" shall mean the Life Insurance Policies owned by Borrowers and which are acceptable to Administrative Agent and that have a Cash Surrender Value acceptable to Administrative Agent. In general, Eligible Life Insurance Policies shall not include:

- (a) any Life Insurance Policy subject to a security interest or lien in favor of any person other than Administrative Agent;
- (b) any Life Insurance Policy that is not subject to the first priority, valid and perfected security interest of Administrative Agent;
- (c) any Life Insurance Policy that is not issued by a nationally recognized and reputable Life Insurance Company, with a credit rating of not less than "A" by AM Best & Co., as determined by Administrative Agent;
- (d) any Life Insurance Policies that are not duly assigned by Borrowers to Administrative Agent pursuant to a Collateral Assignment of Life Insurance Policy or that are subject to a currently effective assignment by any Borrower to any Person (other than the Administrative Agent);
- (e) any Life Insurance Policy with respect to which the premium for such Life Insurance Policy has not been paid when due;
- (f) any Life Insurance Policy which has any policy loans or advances outstanding against such Life Insurance Policy; and

(g) any Life Insurance Policy that has been cancelled, terminated or is no longer valid and effective.

General criteria for Eligible Life Insurance Policies may be established and revised from time to time by Administrative Agent in good faith.

9.85 "Eligible Military Receivables" means Military Receivables arising from the sale of the Borrowers' Inventory which arise in the ordinary course of business, which have been earned by performance. In determining the amount to be so included, the face amount of such an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, rebates, finance charges or other allowances and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by a Borrower to reduce the amount of such Account. Except as otherwise agreed by the Administrative Agent, none of the following shall be deemed to be Eligible Military Receivables:

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(a) Military Receivables that are not evidenced by an invoice; provided, that, such Military Receivables shall not be rendered ineligible under this clause (a) if invoices are not then required to be rendered in accordance with the terms of the underlying agreement relating to such Military Receivables and will be, and are, rendered at the earliest time permitted under such agreements;

(b) Military Receivables that have been outstanding for more than ninety (90) days from the invoice date or more than sixty (60) days past the due date; provided, that, up to \$2,000,000 of Military Receivables which have been outstanding for more than ninety (90) days from the invoice date but less than one hundred and eighty (180) days from the invoice date shall, subject to the satisfaction of all other criteria for eligibility hereunder, be deemed Eligible Military Receivables;

(c) Military Receivables due from any Account Debtor, fifty (50%) percent of whose Military Receivables and Non-Military Receivables are otherwise ineligible under the terms hereof; provided, that, in determining eligibility under this clause (c) the Military Receivable Deduction Amount shall not be considered;

(d) Military Receivables with respect to which a Borrower does not have good, valid and marketable title thereto, free and clear of any lien or security interest (other than liens and security interests granted to the Administrative Agent pursuant to the Financing Agreements and liens permitted under clause (b) of Section 9.8 hereof);

(e) without duplication of the Military Receivables Deduction Amount, Military Receivables which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, claim, counterclaim, offset or chargeback;

(f) Military Receivables which arise out of any sale made not in the ordinary course of business, made on a basis other than upon credit terms usual to the business of a Borrower or are not payable in United States dollars;

(g) Military Receivables which are owed by any Affiliate of any Borrower or Guarantor;

(h) Military Receivables for which all consents, approvals or authorizations of, or registrations or declarations with any Governmental Authority required to be obtained, effected or given in connection with the performance of such Military Receivable by the Account Debtor or in connection with the enforcement of such Military

Receivable by the Administrative Agent have not been duly obtained, effected or given or are not in full force and effect;

(i) Military Receivables due from an Account Debtor which is the subject of any bankruptcy or insolvency proceeding, has had a trustee or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;

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(j) Military Receivables due from any Governmental Authority except to the extent that the subject Account Debtor is the federal government of the United States of America and has complied with the Federal Assignment of Claims Act of 1940 and any similar state legislation;

(k) Military Receivables representing any manufacturer's or supplier's allowances, credits, discounts, incentive plans or similar arrangements entitling a Borrower to discounts on future purchase therefrom;

(l) Military Receivables arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return, setoff or charge back;

(m) Military Receivables arising out of sales to Account Debtors outside the United States unless either (i) such Military Receivables are fully backed by an irrevocable letter of credit on terms, and issued by a financial institution, acceptable to the Administrative Agent and such irrevocable letter of credit is in the possession of the Administrative Agent, or (ii) such Military Receivables are supported by credit insurance acceptable to the Administrative Agent, naming the Administrative Agent as an additional insured, provided, that, the aggregate amount of such Accounts that may be Eligible Accounts shall not exceed \$7,500,000 at any time;

(n) (i) Military Receivables due from an Account Debtor and its Affiliates that is not an Investment Grade Account Debtor, the aggregate of which Military Receivables and Non-Military Receivables due from such Account Debtor and its Affiliates represents more than twenty (20%) percent of all then outstanding Military Receivables and Non-Military Receivables owed to the Borrowers and (ii) Military Receivables due from a single Investment Grade Account Debtor and its Affiliates, the aggregate of which Military Receivables and Non-Military Receivables due from such Account Debtor and its Affiliates represents more than twenty-five (25%) percent of all then outstanding Military Receivables and Non-Military Receivables owed to the Borrowers (but, in each case, the portion of such Military Receivables of Borrowers not in excess of the applicable percentages may be deemed Eligible Military Receivables);

(o) Military Receivables constituting permitted investments made in accordance with clause (h) of Section 9.10 hereof;

(p) Military Receivables due from an Account Debtor who is not, to the Borrowers' knowledge, an approved vendor for the United States of America, or for whom a Borrower is no longer, to such Borrower's knowledge, the official representative of such Account Debtor with the Defense Commissary Agency;

(q) Military Receivables with respect to which the Account Debtor is a Sanctioned Person or a Sanctioned Entity; or

(r) such Military Receivable is deemed by the Administrative Agent in good faith not to be eligible for inclusion in the calculation of the Tranche A Borrowing

The criteria for Eligible Military Receivables set forth above may be revised from time to time by Administrative Agent in its good faith determination to address the results of any collateral and/or field examination or appraisal performed by or on behalf of Administrative Agent after the Effective Date.

9.86 "Eligible Prescription Files" shall mean, as to each Borrower, Prescription Files of such Borrower arising and maintained in the ordinary course of the business of such Borrower and included in an appraisal of Prescription Files received by Administrative Agent in accordance with the requirements of Administrative Agent (including Prescription Files acquired by such Borrower after the Effective Date), in each case which are acceptable to Administrative Agent in good faith based on the criteria set forth below. In general, Eligible Prescription Files shall not include (a) Prescription Files at premises other than those owned or leased and controlled by any Borrower; (b) Prescription Files subject to a security interest or lien in favor of any Person other than Administrative Agent except those permitted in this Agreement that are subject to an intercreditor agreement in form and substance satisfactory to Administrative Agent between the holder of such security interest or lien and Administrative Agent; (c) Prescription Files that are not in a form that may be sold or otherwise transferred or are subject to regulatory restrictions on the transfer thereof that are not acceptable to Administrative Agent in good faith, provided that, the existing limitations as of the Effective Date applicable in the States of Ohio and Michigan that the transferee have the licenses required under applicable State law to operate a pharmacy and sell products subject to a prescription shall be deemed acceptable to Administrative Agent. The criteria for Eligible Prescription Files set forth above may be revised from time to time by Administrative Agent in its good faith determination to address the results of any collateral and/or field examination performed by or on behalf of Administrative Agent after the Effective Date. Any Prescription Files that are not Eligible Prescription Files shall nevertheless be part of the Collateral.

9.87 "Eligible Real Property" shall mean, as to each Borrower, Real Property owned by such Borrower in fee simple which is listed on Schedule 1.67 hereto and included in an appraisal of such Real Property received by Administrative Agent in accordance with the requirements of Administrative Agent and in each case acceptable to Administrative Agent in good faith based on the criteria set forth below. In general, Eligible Real Property shall not include: (a) Real Property which is not owned and operated by a Borrower (and for this purpose vacant land or Real Property, including any closed retail store location, that is actively managed by a Borrower shall be deemed to be "operated" by such Borrower); (b) Real Property subject to a security interest, lien or mortgage or other encumbrance in favor of any person other than Administrative Agent, except those permitted hereunder that are subject to an intercreditor agreement in form and substance satisfactory to Administrative Agent between the holder of such lien and Administrative Agent or are otherwise acceptable to Administrative Agent); (c) Real Property that is not located in the United States of America; (d) Real Property that is not subject to the valid and enforceable, first priority, perfected security interest, lien and mortgage of Administrative Agent; (e) Real Property where Administrative Agent determines that issues relating to compliance with Environmental Laws adversely affect in any material respect the value thereof or the ability of Administrative Agent to sell or otherwise dispose thereof (but subject to the right of Administrative Agent to establish Reserves after the Effective Date to reflect such adverse affect); (f) Real Property improved with residential housing; (g) any parcel

of Real Property for which the applicable Borrower has not delivered to Administrative Agent with respect to such parcel, title insurance, a survey, zoning report, flood certificate, flood insurance in accordance with Section 9.5(b) hereof, environmental studies and other real estate items as required by FIRREA, each of which shall be reasonably satisfactory to each Lender. Any Real Property that is not Eligible Real Property shall nevertheless be part of the Collateral.

9.88 “Eligible Rolling Stock” shall mean Rolling Stock of a Borrower used by a Borrower in the ordinary course of such Borrower’s business and not held for resale or subject to any lease, in each case which are acceptable to Administrative Agent in good faith based on the criteria set forth below. In general, Eligible Rolling Stock shall not include: (a) Rolling Stock that is either: (i) not in transit within the continental United States in the ordinary course of business, or (ii) not based at one of the locations in the continental United States listed on Schedule 8.2 to the Information Certificate or such other locations in the continental United States as Administrative Agent may approve in writing, (b) Rolling Stock that is not owned by a Borrower; (c) Rolling Stock that is not subject to an appraisal in accordance with the requirements of Administrative Agent, (d) Rolling Stock that is not in good order, repair, running, operational and marketable condition (ordinary wear and tear excepted), (e) Rolling Stock the ownership of which is not evidenced by a Certificate of Title that has the name of a Borrower noted thereon as the owner of it or is otherwise not properly registered in one of the States of the United States to such Borrower that is entitled to operate such Rolling Stock in the State that has issued such Certificate of Title in accordance with all applicable laws (other than any Rolling Stock the ownership of which is not required to be evidenced by a certificate of title under the laws applicable to it) and Administrative Agent has received such evidence thereof as it may reasonably require; (f) Rolling Stock that does not meet, in all material respects, all applicable material safety or regulatory standards applicable to it for the use for which it is intended or for which it is being used, (g) Rolling Stock that does not meet, in all material respects, all applicable material standards of all motor vehicle laws or other statutes and regulations established by any Governmental Authority or is subject to any licensing or similar requirement that would limit the right of Administrative Agent to sell or otherwise dispose of such Rolling Stock; (h) Rolling Stock that is not used in the business of a Borrower in the ordinary course of business; (i) worn out, obsolete or out of service Rolling Stock; (j) Rolling Stock that is not subject to the first priority, valid and perfected security interest of Administrative Agent (including that Administrative Agent shall have received evidence satisfactory to it that its Lien has been noted on the Certificate of Title with respect to such Rolling Stock); (k) Rolling Stock subject to a security interest or lien of any other person or entity (other than a person with whom Administrative Agent has a satisfactory intercreditor agreement and other than liens permitted under Sections 9.8(b), (c) and (e) herein); (l) any Rolling Stock consisting of automobiles or other non-commercial vehicles; (m) any Rolling Stock on lease or rental to another Person and not operated by a Borrower; (n) any Rolling Stock not covered by an insurance policy of a Borrower in such amounts as are acceptable to Administrative Agent and which provides that Administrative Agent is a loss payee in the case of any loss or damage thereto that results in a claim to proceeds of insurance and (o) Rolling Stock that is damaged or defective. The criteria for Eligible Rolling Stock set forth above may be revised from time to time by Administrative Agent in its good faith determination to address the results of any collateral and/or field examination performed by or on behalf of Administrative

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Agent after the Effective Date. Any Rolling Stock that is not Eligible Rolling Stock shall nevertheless be part of the Collateral.

9.89 “Eligible Transferee” shall mean (a) any Lender (other than a Defaulting Lender); (b) the parent company of any Lender and/or any Affiliate of such Lender which is at least fifty (50%) percent owned by such Lender or its parent company; (c) any Approved Fund, and in each case is approved by Administrative Agent; and (d) any other commercial bank having a combined capital and surplus of at least \$250,000,000 or financial institution having a net worth (or the equivalent thereof in the case of an investment partnership, managed account, limited liability company or similar entity) calculated in accordance with applicable generally accepted accounting principles of not less than \$100,000,000, or “accredited investor” (as defined in Regulation D under the Securities Act) that is engaged in the business of making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business having a net worth (or the equivalent thereof in the case of an investment partnership, managed account, limited liability company or similar entity) calculated in accordance with applicable generally accepted accounting principles of not less than \$100,000,000, and in each case, approved by Administrative Agent, provided, that, (i) neither any Borrower nor any Guarantor or any Affiliate of any Borrower or Guarantor shall qualify as an Eligible Transferee, (ii) no natural person shall qualify as an Eligible Transferee and (iii) no Person to whom any Indebtedness which is in any way subordinated in right of payment to any other Indebtedness of any Borrower or Guarantor shall qualify as an Eligible Transferee, except as Administrative Agent may otherwise specifically agree.

9.90 “Eligible Unaffixed Tax Stamp Inventory” shall mean, at the time of any determination thereof, Eligible Inventory consisting of unaffixed Tax Stamps owned by the Borrowers purchased from any Governmental Authority in any State or Commonwealth which may be returned to any such Governmental Authority for full credit.

9.91 “Environmental Compliance Reserves” shall mean, with respect to Eligible Real Property, any Reserve which Administrative Agent, from time to time in its Permitted Discretion establish for estimable amounts that are reasonably likely to be expended by any of the Borrowers or Guarantors in order for such Borrower or Guarantor and its operations and property (a) to comply with any notice from a Governmental Authority asserting non-compliance with Environmental Laws, (b) to correct any such non-compliance with Environmental Laws, or (c) to remedy any condition disclosed in the Phase I Environmental Assessments delivered to the Administrative Agent on or prior to the Effective Date.

9.92 “Environmental Laws” shall mean all foreign, Federal, State and local laws (including common law), legislation, rules, codes, licenses, permits (including any conditions imposed therein), authorizations, judicial or administrative decisions, injunctions or agreements between any Borrower or Guarantor and any Governmental Authority, (a) relating to pollution and the protection, preservation or restoration of the environment (including air, water vapor, surface water, ground water, drinking water, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, (b) relating to the exposure to, or the use, storage, recycling, treatment, generation, manufacture, processing, distribution, transportation, handling, labeling, production, release or disposal, or threatened release, of Hazardous Materials, or (c) relating to all laws with regard to

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recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials. The term “Environmental Laws” includes (i) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act, the Federal Water Pollution Control Act of 1972, the Federal Clean Water Act, the Federal Clean Air Act, the

Federal Resource Conservation and Recovery Act of 1976 (including the Hazardous and Solid Waste Amendments thereto), the Federal Solid Waste Disposal and the Federal Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Federal Safe Drinking Water Act of 1974, (ii) applicable state counterparts to such laws and (iii) any common law or equitable doctrine that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Hazardous Materials.

9.93 "Equipment" shall mean, as to each Borrower and Guarantor, all of such Borrower's and Guarantor's now owned and hereafter acquired equipment, wherever located, including machinery, data processing and computer equipment (whether owned or licensed and including embedded software), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.

9.94 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, together with all rules, regulations and interpretations thereunder or related thereto.

9.95 "ERISA Affiliate" shall mean any person required to be aggregated with any Borrower, any Guarantor or any of its or their respective Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

9.96 "ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan; (b) the adoption of any amendment to a Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (c) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (d) the filing pursuant to Section 412 of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the occurrence of a non-exempt "prohibited transaction" with respect to which any Borrower, Guarantor or any of its or their respective Subsidiaries is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which any Borrower, Guarantor or any of its or their respective Subsidiaries could otherwise be liable; (f) a complete or partial withdrawal by any Borrower, Guarantor or any ERISA Affiliate from a Multiemployer Plan or a cessation of operations which is treated as such a withdrawal or notification that a Multiemployer Plan is in reorganization; (g) the filing of a notice of intent to terminate a Plan subject to Title IV of ERISA, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a Plan; (h) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (i) the imposition of any liability under Title IV of ERISA, other than the Pension Benefit Guaranty Corporation premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower, Guarantor or any ERISA Affiliate

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in excess of \$10,000,000 and (j) any other event or condition with respect to a Plan including any Plan subject to Title IV of ERISA maintained, or contributed to, by any ERISA Affiliate that could reasonably be expected to result in an increase of \$10,000,000 or more in the amount required to be paid by any Borrower in any year in excess of the amount such Borrower would have been required but for such event or condition.

9.97 "Erroneous Payment" has the meaning specified therefor in [Section 13.13](#).

9.98 “Erroneous Payment Deficiency Assignment” has the meaning specified therefor in Section 13.13.

9.99 “Erroneous Payment Impacted Loans” has the meaning specified therefor in Section 13.13.

9.100 “Erroneous Payment Return Deficiency” has the meaning specified therefor in Section 13.13.

9.101 “ESG” has the meaning specified therefor in Section 2.9.

9.102 “ESG Amendment” has the meaning specified therefor in Section 2.9.

9.103 “ESG Pricing Provisions” has the meaning specified therefor in Section 2.9.

9.104 “ESG Ratings” has the meaning specified therefor in Section 2.9.

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

9.106 “Event of Default” shall mean the occurrence or existence of any event or condition described in Section 10.1 hereof.

9.107 “Excess Availability” shall mean the amount, as determined by Administrative Agent, calculated at any date, equal to:

(a) the lesser of: (i) the Total Borrowing Base and (ii) the Maximum Credit (in each case under (i) or (ii) after giving effect to any Reserves other than any Reserves in respect of Letter of Credit Accommodations), minus

(b) the sum of: (i) the amount of all then outstanding and unpaid Obligations of such Borrower (but not including for this purpose Obligations of such Borrower arising pursuant to any guarantees in favor of Administrative Agent and Lenders of the Obligations of the other Borrowers or any outstanding Letter of Credit Accommodations), plus (ii) the amount of all Reserves then established in respect of Letter of Credit Accommodations, plus (iii) the aggregate amount of all then outstanding and unpaid trade payables and other obligations of such Borrower which are outstanding more than thirty (30) days past due as of such time (other than trade payables or other obligations being contested or disputed by such Borrower in good faith), plus (iv) without duplication, the amount of checks issued by such

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Borrower to pay trade payables and other obligations which are more than thirty (30) days past due as of such time (other than trade payables or other obligations being contested or disputed by such Borrower in good faith), but not yet sent.

9.108 “Exchange Act” shall mean the Securities Exchange Act of 1934, together with all rules, regulations and interpretations thereunder or related thereto.

9.109 “Existing Credit Agreements” shall have the meaning set forth in the recitals to this Agreement.

9.110 “Existing Letters of Credit” shall have the meaning set forth in the recitals to this Agreement.

9.111 “Existing Nash-Finch Agent” shall have the meaning set forth in the recitals to this Agreement.

9.112 “Existing Nash-Finch Borrowers” shall have the meaning set forth in the recitals to this Agreement.

9.113 “Existing Nash-Finch Credit Agreement” shall have the meaning set forth in the recitals to this Agreement.

9.114 “Existing Nash-Finch Lenders” shall have the meaning set forth in the recitals to this Agreement.

9.115 “Existing Nash-Finch Letters of Credit” shall have the meaning set forth in the recitals to this Agreement.

9.116 “Existing Nash-Finch Loans” shall have the meaning set forth in the recitals to this Agreement.

9.117 “Existing Nash-Finch Security Agreement” shall mean the Security Agreement, dated December 21, 2011, by and among Existing Nash-Finch Agent and Existing Nash-Finch Borrowers.

9.118 “Existing Spartan Agent” shall have the meaning set forth in the recitals to this Agreement.

9.119 “Existing Spartan Borrowers” shall have the meaning set forth in the recitals to this Agreement.

9.120 “Existing Spartan Credit Agreement” shall have the meaning set forth in the recitals to this Agreement.

9.121 “Existing Spartan Lenders” shall have the meaning set forth in the recitals to this Agreement.

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9.122 “Existing Spartan Letters of Credit” shall have the meaning set forth in the recitals to this Agreement.

9.123 “Existing Spartan Loans” shall have the meaning set forth in the recitals to this Agreement.

9.124 “Farm Products” shall mean crops, livestock, supplies used or produced in a farming operation and products of crops or livestock and including farm products as such term is defined in the Food Security Act and the UCC.

9.125 “Farm Products Sellers” shall mean, collectively, sellers or suppliers to any Borrower of any farm product (as such term is defined in the Food Security Act and the UCC) and including any perishable agricultural commodity (as defined in PACA) or livestock (as defined in the PSA), meat, meat food products or livestock products derived therefrom or any poultry or poultry products derived therefrom; sometimes being referred to herein individually as a “Farm Product Seller”.

9.126 “FATCA” shall mean current Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is that is substantively comparable and not materially more burdensome to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

9.127 “Federal Funds Rate” shall mean, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business

Day, the average of the quotations for such day on such transactions received by Administrative Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

9.128 “Fee Letter” shall mean, the Fee Letter, dated July 21, 2013, by and among Parent, Wells Fargo, Bank of America and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

9.129 “Financing Agreements” shall mean, collectively, this Agreement and all notes, guarantees, security agreements, deposit account control agreements, investment property control agreements, intercreditor agreements, Collateral Assignment of Life Insurance Policies and all other agreements, documents and instruments now or at any time hereafter executed and/or delivered by any Borrower or Obligor in connection with this Agreement; provided, that, in no event shall the term Financing Agreements be deemed to include any Hedge Agreement or any agreement evidencing a Bank Product.

9.130 “FIRREA” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time.

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9.131 “Fiscal Intermediary” shall mean any qualified insurance company or other financial institution that has entered into an ongoing relationship with any Governmental Authority to make payments to payees under Medicare, Medicaid or any other Federal, State or local public health care or medical assistance program pursuant to any of the Health Care Laws.

9.132 “Fixed Charge Coverage Ratio” shall mean, as to any Person, with respect to any period, the ratio of (a) the amount equal to EBITDA of such Person for such period to (b) the Fixed Charges of such Person for such period.

9.133 “Fixed Charges” shall mean, as to any Person, with respect to any period, the sum of, without duplication, (a) all cash Interest Expense during such period, plus (b) all Capital Expenditures during such period, plus (c) all regularly scheduled (as determined at the beginning of the respective period) principal payments in respect of Indebtedness for borrowed money (excluding payments in respect of Revolving Loans which do not result in a reduction of the Maximum Credit), including, without limitation, scheduled reductions in the amounts of Tranche A Real Estate Availability, Tranche A Equipment Availability and Tranche A Rolling Stock Availability in accordance with the definitions of such terms, and Indebtedness with respect to Capital Leases (and without duplicating items (a) and (c) of this definition, the interest component with respect to Indebtedness under Capital Leases) during such period, plus (d) taxes paid during such period in cash.

9.134 “Food Security Act” shall mean the Food Security Act of 1984, 7 U.S.C. Section 1631 et. seq., as the same now exists or may hereafter from time to time be amended, modified, recodified or supplemented, together with all rules and regulations thereunder.

9.135 “Food Security Act Notices” shall have the meaning set forth in Section 8.20 hereof.

9.136 “Floor” means a rate of interest equal to 0%.

9.137 “Foreign Lender” shall mean any Lender that is organized under the laws of a jurisdiction other than that in which any Borrower is a resident for tax

purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

9.138 “Flood Insurance Laws” means, collectively, the following (in each case as now or hereafter in effect or any successor statute thereto): (i) the National Flood Insurance Act of 1968, (ii) the Flood Disaster Protection Act of 1973, (iii) the National Flood Insurance Reform Act of 1994 and (iv) the Flood Insurance Reform Act of 2004.

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

9.140 “Freight Forwarder Agreement” shall mean an agreement, reasonably acceptable in form and substance to the Administrative Agent, among a Borrower, a Freight Forwarder, and the Administrative Agent, in which the Freight Forwarder acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the

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Administrative Agent and agrees, upon notice from the Administrative Agent, to hold and dispose of the subject Inventory solely as directed by the Administrative Agent.

9.141 “Freight Forwarders” shall mean the persons listed on Schedule 1.114 hereto or such other person or persons as may be selected by Borrowers after the Effective Date and after written notice by Lead Borrower to Administrative Agent who are reasonably acceptable to Administrative Agent to handle the receipt of Inventory within the United States of America or Canada and/or to clear Inventory through the Bureau of Customs and Border Protection (formerly the Customs Service), or its Canadian equivalent, or other domestic or foreign export control authorities or otherwise perform port of entry services to process Inventory imported by Borrowers from outside the United States of America or Canada (such persons sometimes being referred to herein individually as a “Freight Forwarder”), provided, that, as to each such person, (a) Administrative Agent shall have received a Freight Forwarder Agreement by such person in favor of Administrative Agent (in form and substance reasonably satisfactory to Administrative Agent) duly authorized, executed and delivered by such person, (b) such agreement shall be in full force and effect and (c) such person shall be in compliance in all material respects with the terms thereof.

9.142 “Fronting Exposure” shall mean, at any time there is a Defaulting Lender, (a) with respect to any Issuing Bank, such Defaulting Lender’s Pro Rata Share of the outstanding Letter of Credit Accommodations other than outstanding Letter of Credit Accommodations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or subject to Letter of Credit Collateralization in accordance with the terms hereof, and (b) with respect to Swing Line Lender, such Defaulting Lender’s Pro Rate Share of outstanding Swing Line Loans made by Swing Lender other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

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

9.144 “GAAP” shall mean generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board which are applicable to the circumstances as of the date of determination consistently applied, except that, for purposes of Section 9.9(f)(viii)

hereof, GAAP shall be determined on the basis of such principles in effect on the Effective Date and consistent with those used in the preparation of the most recent audited financial statements delivered to Administrative Agent prior to the Effective Date.

9.145 “Governmental Authority” shall mean any nation or government, any state, province, or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

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9.146 “Guarantors” shall have the meaning assigned thereto in the recitals to this Agreement.

9.147 “Hazardous Materials” shall mean any hazardous, toxic or dangerous substances, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, polychlorinated biphenyls, pesticides, herbicides, sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Governing Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

9.148 “Health Care Laws” shall mean all Federal, State and local laws, rules, regulations, interpretations, guidelines, ordinances and decrees primarily relating to patient healthcare, any health care provider, medical assistance and cost reimbursement program, as now or at any time hereafter in effect, applicable to any Borrower or Guarantor, including, but not limited to, the Social Security Act, the Social Security Amendments of 1972, the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Medicare and Medicaid Patient and Program Protection Act of 1987 and HIPAA.

9.149 “Hedge Agreement” shall mean an agreement between any Borrower or Guarantor and Administrative Agent or any Bank Product Provider that is a swap agreement as such term is defined in 11 U.S.C. Section 101, and including any rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement rate, floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing or a master agreement for any the foregoing together with all supplements thereto) for the purpose of protecting against or managing exposure to fluctuations in interest or exchange rates, currency valuations or commodity prices; sometimes being collectively referred to herein as “Hedge Agreements”.

9.150 “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as the same now exists or may hereafter from time to time be amended, modified, recodified or supplemented, together with all rules and regulations thereunder.

9.151 “Indebtedness” shall mean, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (except any such balance that constitutes an account payable to a trade creditor (whether or not an Affiliate) created, incurred, assumed or guaranteed by such

Person in the ordinary course of business of such Person in connection with obtaining goods, materials or services that is not overdue by more than ninety (90) days, unless the trade payable is being contested in good faith); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any

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indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities issued by such Person; (f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account; (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; (h) all net obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values; (i) all obligations owed by such Person under License Agreements with respect to non-refundable, advance or minimum guarantee royalty payments; and (j) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP.

9.152 "Information Certificate" shall mean, collectively, the Information Certificates of Borrowers and Guarantors constituting Exhibit C hereto containing material information with respect to Borrowers and Guarantors, their respective businesses and assets provided by or on behalf of Borrowers and Guarantors to Administrative Agent in connection with the preparation of this Agreement and the other Financing Agreements and the financing arrangements provided for herein.

9.153 "Intellectual Property" shall mean, as to each Borrower and Guarantor, such Borrower's and Guarantor's now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright registrations, trademarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or the license of any trademark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration; software and contract rights relating to computer software programs, in whatever form created or maintained.

9.154 “Interest Expense” shall mean, for any period, as to any Person, as determined in accordance with GAAP, the total interest expense of such Person, whether paid or accrued during such period (including the interest component of Capital Leases for such period).

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including, without limitation, discounts in connection with the sale of any Accounts, but excluding interest paid in property other than cash and any other interest expense not payable in cash.

9.155 “Interest Period” means, as to any Term SOFR Rate Loan, the period commencing on the date such Term SOFR Rate Loan is disbursed or converted to or continued as a Term SOFR Rate Loan and ending one, three or six months thereafter (or such shorter period as each of the Lenders can accommodate in their discretion), as selected by the Lead Borrower in its SOFR Loan Notice (for avoidance of doubt, the Interest Period can be of shorter duration than the Term SOFR Reference Rate tenor); provided that:

(i) interest shall accrue at the applicable rate based upon Adjusted Term SOFR, from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires;

(ii) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month that is one, three or six months after the date on which the Interest Period began, as applicable;

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

(v) no tenor that has been removed from this definition pursuant to Section 3.4 shall be available for specification in any SOFR Loan Notice or conversion or continuation notice.

For purposes hereof, the date of a borrowing initially shall be the date on which such borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such borrowing.

9.156 “Interest Rate” shall mean,

(a) Subject to clause (b) of this definition below and Section 3.4 of this Agreement:

(i) as to Tranche A Revolving Loans that are Base Rate Loans, a rate equal to the then Applicable Margin for such Base Rate Loans on a per annum basis plus the Base Rate;

(ii) as to Tranche A Revolving Loans that are Term SOFR Rate Loans, a rate equal to the then Applicable Margin for such Term SOFR Rate Loans on a per annum basis plus Adjusted Term SOFR (in each case, based on Adjusted Term SOFR applicable for the

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relevant Interest Period, whether such rate is higher or lower than any rate previously quoted to a Borrower);

(iii) as to Tranche A Revolving Loans that are Daily Simple SOFR Loans, a rate equal to the then Applicable Margin for such Daily Simple SOFR Loans on a per annum basis plus Adjusted Daily Simple SOFR;

(iv) as to Tranche A-1 Revolving Loans that are Base Rate Loans, a rate equal to the then Applicable Margin for such Base Rate Loans on a per annum basis plus the Base Rate;

(v) as to Tranche A-1 Revolving Loans that are Term SOFR Rate Loans, a rate equal to the then Applicable Margin for such Term SOFR Rate Loans on a per annum basis plus Adjusted Term SOFR (in each case, based on Adjusted Term SOFR applicable for the relevant Interest Period, whether such rate is higher or lower than any rate previously quoted to a Borrower); and

(vi) as to Tranche A-1 Revolving Loans that are Daily Simple SOFR Loans, a rate equal to the then Applicable Margin for such Daily Simple SOFR Loans on a per annum basis plus Adjusted Daily Simple SOFR.

(b) Notwithstanding anything to the contrary contained in clause (a) of this definition, the Applicable Margin otherwise used to calculate the Interest Rate for Base Rate Loans and SOFR Rate Loans shall be the highest percentage set forth in the definition of the term Applicable Margin for each category of Loans (without regard to the amount of Monthly Average Excess Availability) plus two (2%) percent per annum, at Administrative Agent's option, (i) for the period (A) from and after the effective date of termination or non-renewal hereof until Administrative Agent and Lenders have received full and final payment of all outstanding and unpaid Obligations which are not contingent and cash collateral or letter of credit, as Administrative Agent may specify, in the amounts and on the terms required under Section 13.1 hereof for contingent Obligations (notwithstanding entry of a judgment against any Borrower or Guarantor) and (B) from and after the date of the occurrence of an Event of Default and for so long as such Event of Default is continuing and (ii) on (A) Tranche A Revolving Loans to a Borrower at any time outstanding in excess of the Tranche A Borrowing Base, and (B) Tranche A-1 Revolving Loans to a Borrower at any time outstanding in excess of the Tranche A-1 Borrowing Base (in each case, whether or not such excess(es) arise or are made with or without the knowledge or consent of Administrative Agent or any Lender and whether made before or after an Event of Default).

9.157 "Inventory" shall mean, as to each Borrower and Guarantor, all of such Borrower's and Guarantor's now owned and hereafter existing or acquired goods, wherever located, which (a) are leased by such Borrower or Guarantor as lessor; (b) are held by such Borrower for sale or lease or to be furnished under a contract of service; (c) are furnished by such Borrower or Guarantor under a contract of service; or (d) consist of raw materials, work in process, finished goods or materials used or consumed in its business, and which includes, without limitation, any Tax Stamps which are required to be affixed to cigarettes or other

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tobacco-based products, such as cigars, pipe tobacco, chewing tobacco and snuff, to permit the sale thereof, whether such stamps are affixed or unaffixed to such tobacco products.

9.158 "Investment Grade" means ratings of BBB- and Baa3 or better by Standard & Poor's Rating Group and Moody's Investors Service, Inc., respectively, of

long-term non-enhanced senior unsecured debt.

9.159 “Investment Property Control Agreement” shall mean an agreement in writing, in form and substance satisfactory to Administrative Agent, by and among Administrative Agent, any Borrower or Guarantor (as the case may be) and any securities intermediary, commodity intermediary or other person who has custody, control or possession of any investment property of such Borrower or Guarantor agreeing that such securities intermediary, commodity intermediary or other person will comply with entitlement orders originated by Administrative Agent with respect to such investment property, or other instructions of Administrative Agent and including such other terms and conditions as Administrative Agent may require.

9.160 “Issuing Bank” shall have the meaning set forth for such term in Section 2.4(a) hereof.

9.161 “Joinder Agreement” shall mean an agreement, in form and substance reasonably satisfactory to Administrative Agent, pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Financing Agreements as a Borrower or a Guarantor, as the Administrative Agent may reasonably determine.

9.162 “KPIs” has the meaning specified therefor in Section 2.9.

9.163 “Lead Borrower” shall mean SpartanNash Company, a Michigan corporation, formerly known as Spartan Stores, Inc., in its capacity as Lead Borrower on behalf of itself and the other Borrowers pursuant to Section 6.7 hereof and its successors and assigns in such capacity.

9.164 “Lenders” shall mean the financial institutions who are signatories hereto as Lenders (including Swing Line Lender) and other persons made a party to this Agreement as a Lender in accordance with Section 13.7 hereof, and their respective successors and assigns; each sometimes being referred to herein individually as a “Lender”.

9.165 “Letter of Credit Accommodations” shall mean, collectively, the letters of credit, merchandise purchase or other guaranties which are from time to time either (a) issued or opened by an Issuing Bank for the account of any Borrower or Obligor or (b) with respect to which Administrative Agent or Lenders have agreed to indemnify the issuer or guaranteed to the issuer the performance by any Borrower or Obligor of its obligations to such issuer; sometimes being referred to herein individually as “Letter of Credit Accommodation”. “Letter of Credit Accommodations” as such term is used herein shall include for all purposes hereunder the Existing Letters of Credit.

9.166 “Letter of Credit Collateralization” shall mean either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Administrative Agent, including

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provisions that specify that the letter of credit fee and all usage charges set forth in this Agreement will continue to accrue while the Letter of Credit Accommodations are outstanding) to be held by Administrative Agent in an amount equal to one hundred five (105%) percent of the then outstanding Letter of Credit Accommodations, (b) causing the letters of credit issued under this Agreement to be returned to the Issuing Bank, or (c) providing Administrative Agent with a standby letter of credit, in form and substance reasonably satisfactory to Administrative Agent, from a commercial bank acceptable to Administrative Agent (in its sole discretion) in an amount equal to one hundred five (105%) percent of the then outstanding Letter of Credit Accommodations; it being understood that the letter of credit fee and all usage charges set forth in this Agreement

will continue to accrue while the Letter of Credit Accommodations are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit.

9.167 “License Agreements” shall have the meaning set forth in Section 8.11 hereof.

9.168 “Life Insurance Companies” shall mean the nationally recognized and reputable life insurance companies, each with a credit rating of not less than “A” by AM Best & Co., as determined by Administrative Agent, and their respective successors and assigns, that are the issuers of the Life Insurance Policies.

9.169 “Life Insurance Policies” shall mean the whole life insurance policies issued by the Life Insurance Companies, as may be submitted by Borrowers to Administrative Agent from time to time hereunder which are acceptable to Administrative Agent for consideration to become an Eligible Life Insurance Policy.

9.170 “Loan Limit” shall mean the lesser of (a) the Total Borrowing Base or (b) the Maximum Credit.

9.171 “Loans” shall mean, collectively, the Revolving Loans and the Swing Line Loans.

9.172 “Loan Parties” means, collectively, the Borrowers and each Guarantor.

9.173 “Margin Stock” shall mean margin stock as defined in Regulation T, U or X, as applicable, of the FRB as in effect from time to time.

9.174 “Material Adverse Effect” shall mean a material adverse effect on (a) the financial condition, business, performance or operations of Borrowers and Guarantors (taken as a whole) or the legality, validity or enforceability of this Agreement or any of the other Financing Agreements; (b) the legality, validity, enforceability, perfection or priority of the security interests and liens of Administrative Agent upon the Collateral (taken as a whole); (c) the Collateral (taken as a whole) or its value (taken as a whole), (d) the ability of Borrowers (taken as a whole) to repay the Obligations or of Borrowers (taken as a whole) to perform their obligations under this Agreement or any of the other Financing Agreements as and when to be performed; or (e) the ability of Administrative Agent or any Lender to enforce the Obligations or realize upon the Collateral or otherwise with respect to the rights and remedies of Administrative

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Agent and Lenders under this Agreement or any of the other Financing Agreements (taken as a whole).

9.175 “Material Contract” shall mean (a) any contract or other agreement (other than the Financing Agreements or contracts relating to the purchase or sale of Inventory in the ordinary course of business), written or oral, of any Borrower or Guarantor involving monetary liability of or to any Person in an amount in excess of \$10,000,000 in any fiscal year and (b) any other contract or other agreement (other than the Financing Agreements or contracts relating to the purchase or sale of Inventory in the ordinary course of business), whether written or oral, to which any Borrower or Guarantor is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect.

9.176 “Maturity Date” shall the meaning set forth in Section 13.1 hereof.

9.177 “Maximum Credit” shall mean the sum of the Tranche A Maximum Credit and the Tranche A-1 Maximum Credit.

9.178 “Medicaid” shall mean the health care financial assistance program jointly financed and administered by the Federal and State governments under Title XIX of the Social Security Act.

9.179 “Medicaid Account” shall mean any Accounts of Borrowers or Guarantors arising pursuant to services rendered by Borrowers or Guarantors to eligible Medicaid beneficiaries to be paid by a Fiscal Intermediary or by the United States of America acting under the Medicaid program, any State or the District of Columbia acting pursuant to a health plan adopted pursuant to Title XIX of the Social Security Act or any other Governmental Authority under Medicaid.

9.180 “Medicare” shall mean the health care financial assistance program under Title XVIII of the Social Security Act.

9.181 “Medicare Account” shall mean any Accounts of Borrowers or Guarantors arising pursuant to goods sold or services rendered by Borrowers or Guarantors to eligible Medicare beneficiaries to be paid by a Fiscal Intermediary or by the United States of America acting under the Medicare program or any other Governmental Authority under Medicare.

9.182 “Merger Agreement Representations” shall mean the representations made by Nash-Finch in the Nash-Finch Merger Agreement as are material to the interests of Administrative Agent, Arrangers and Lenders, but only to the extent that Parent, SSD or any Affiliate of either of them has the right to terminate the obligations under the Nash-Finch Merger Agreement as a result of a breach of such representations.

9.183 “Military Receivables” shall mean Accounts (other than Credit Card Receivables and Pharmacy Receivables) due to a Borrower from Account Debtors arising from the sale of Inventory to such Account Debtor, which Inventory is resold by the Account Debtor to a United States military commissary or exchange.

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9.184 “Military Receivables Deduction Amount” shall mean, as to any Military Receivable, the sum of one hundred (100%) percent of contra accounts and other offsets which the applicable Account Debtor may have with respect to such Military Receivables; provided, that,

(a) until the date one hundred eighty (180) days after the Effective Date (or such longer period as Administrative Agent may agree but not to exceed an additional one hundred eighty (180) days without the consent of the Required Lenders), Administrative Agent may include in the Military Receivables Deduction Amount only such contra accounts and other offsets arising in connection with the purchase of goods from suppliers obligated on Military Receivables to the extent such purchases relate to the military distribution division of Nash Finch and to Grocery Supply Acquisition Corp. (so long as the amount of the Excess Availability is greater than the additional amount that the Military Receivables Deduction Amount would be if all amounts owing by Nash Finch and Grocery Supply Acquisition Corp. to such suppliers were included in the Military Receivables Deduction Amount) and

(b) on and after the end of such period, Administrative Agent may include in the Military Receivables Deduction Amount all amounts owing by Nash Finch (including, but not limited to, the military distribution division) and Grocery Supply Acquisition Corp. to the suppliers obligated on Military Receivables, except that in the event that Lead Borrower shall establish a separate subsidiary or subsidiaries subject to, and in accordance with the terms hereof, that is engaged in the business of

purchasing goods and delivering goods giving rise to Military Receivables (in addition to Grocery Supply Acquisition Corp.), then only the amounts owing by any such subsidiary and Grocery Supply Acquisition Corp. to such suppliers shall be included in the Military Receivables Deduction Amount.

9.185 “Monthly Average Excess Availability” shall mean, at any time, the average of the aggregate amount of the Excess Availability during the immediately preceding calendar month as calculated by Administrative Agent in good faith.

9.186 “Mortgages” shall mean, collectively, the mortgages, deeds of trust and deeds to secure debt with respect to Real Property of any Borrower or Guarantor in favor of, or for the benefit of Administrative Agent, as set forth on Schedule 1.157 hereto, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

9.187 “Multiemployer Plan” shall mean a “multi-employer plan” as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by any Borrower, Guarantor or any ERISA Affiliate.

9.188 “Nash-Finch Merger” shall mean the merger of Nash-Finch with and into SSD pursuant to the Nash-Finch Merger Documents.

9.189 “Nash-Finch Merger Agreement” shall mean the Agreement and Plan of Merger, dated as of July 21, 2013, by and among Parent, SSD and Nash-Finch, together with all exhibits, schedules, annexes and other disclosure letters thereto.

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9.190 “Nash-Finch Merger Documents” shall mean the Nash-Finch Merger Agreement and all other material documents related thereto and executed in connection therewith.

9.191 “Net Proceeds” shall mean the aggregate cash proceeds payable to any Borrower or Guarantor in respect of any sale, lease, transfer or other disposition of any assets or properties, or interest in assets and properties or as proceeds of any loans or other financial accommodations provided to any Borrower or Guarantor or as proceeds from the issuance and/or sale of any Capital Stock, in each case net of the reasonable and customary direct costs relating to such sale, lease, transfer or other disposition or loans or other financial accommodation or issuance and/or sale (including, without limitation, legal, accounting and investment banking fees, and sales commissions) and taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), and amounts applied to the repayment of indebtedness secured by a valid and enforceable lien on the asset or assets that are the subject of such sale or other disposition required to be repaid in connection with such transaction. Net Proceeds shall exclude any non-cash proceeds received from any sale or other disposition or other transaction, but shall include such proceeds when and as converted by any Borrower or Guarantor to cash or other immediately available funds.

9.192 “Net Recovery Percentage” shall mean the fraction, expressed as a percentage, as to Inventory, (a) the numerator of which is the amount equal to the amount of the recovery in respect of the Inventory at such time, as to Inventory of the Retail Division, on a “net orderly liquidation value” basis, and as to Inventory of the Distribution Division, on a “net orderly liquidation value” basis as set forth in the most recent acceptable appraisal of Inventory received by Administrative Agent in accordance with Section 7.3, in each case, net of operating expenses, liquidation

expenses and commissions, and (b) the denominator of which is the applicable original cost of the aggregate amount of the Inventory subject to such appraisal.

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

9.194 “Non-Military Receivables” shall mean Accounts due to a Borrower or a Guarantor which do not constitute Military Receivables.

9.195 “Non-Operating Assets” shall mean assets consisting of closed stores, vacant land or closed distribution centers or other facilities that are not currently used in the operations of Parent or its subsidiaries as set forth on Schedule 1.167 hereto.

9.196 “Obligations” shall mean (a) any and all Loans, Letter of Credit Accommodations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any or all of Borrowers to Administrative Agent or any Lender and/or any of their Affiliates, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Agreement or any of the other Financing Agreements, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any case with respect to such Borrower under the United States Bankruptcy Code or any similar statute (including the payment of interest and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or

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allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, or secured or unsecured and (b) for purposes only of Section 5.1 hereof and subject to the priority in right of payment set forth in Section 6.4 hereof, all obligations, liabilities and indebtedness of every kind, nature and description owing by any Borrower or Guarantor to Administrative Agent or any Bank Product Provider arising under or pursuant to any Bank Products, whether now existing or hereafter arising, provided, that, (i) as to any such obligations, liabilities and indebtedness arising under or pursuant to a Hedge Agreement, the same shall only be included within the Obligations if upon Administrative Agent’s request, Administrative Agent shall have entered into an agreement, in form and substance reasonably satisfactory to Administrative Agent, with the Bank Product Provider that is a counterparty to such Hedge Agreement, as acknowledged and agreed to by Borrowers, providing for the delivery to Administrative Agent by such counterparty of information with respect to the amount of such obligations and providing for the other rights of Administrative Agent and such Bank Product Provider in connection with such arrangements and (ii) Administrative Agent shall have received from any Bank Product Provider, other than Wells and its Affiliates, written notice that (A) such Bank Product Provider has entered into a transaction to provide Bank Products to such Borrower or Guarantor and (B) the obligations arising pursuant to such Bank Products provided to such Borrower or Guarantor constitute Obligations entitled to the benefits of the security interest of Administrative Agent granted hereunder. In no event shall any Bank Product Provider acting in such capacity to whom such obligations, liabilities or indebtedness are owing be deemed a Lender for purposes hereof to the extent of and as to such obligations, liabilities or indebtedness except that each reference to the term “Lender” in Sections 12.1, 12.2, 12.5, 12.6, 12.7, 12.9, 12.12 and 13.6 hereof shall be deemed to include such Bank Product Provider and in no event shall the approval of any such person in its capacity as Bank Product Provider be required in connection with the release or

termination of any security interest or lien in favor of Administrative Agent. The “Obligations” shall not include, with respect to any Borrower or Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Borrower or Guarantor of, or the grant by such Borrower or Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Borrower’s or Guarantor’s failure for any reason not to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the guarantee of such Borrower or Guarantor becomes effective with respect to such related Swap Obligation.

9.197 “Obligor” shall mean any guarantor, endorser, acceptor, surety or other person liable on or with respect to the Obligations or who is the owner of any property which is security for the Obligations (including, without limitation, Guarantors), other than Borrowers.

9.198 “OFAC” shall mean the Office of Foreign Assets Control of the U.S. Department of the Treasury.

9.199 “Other Taxes” shall have the meaning set forth in Section 6.11(c) hereof.

9.200 “PACA” shall mean the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. Section 499a et. seq., as the same now exists or may hereafter from time to

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time be amended, modified, recodified or supplemented, together with all rules and regulations thereunder.

9.201 “PSA” shall mean the Packers and Stockyard Act of 1921, 7 U.S.C. Section 181 et. seq., as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

9.202 “Parent” shall mean SpartanNash Company, a Michigan corporation, formerly known as Spartan Stores, Inc., and its successors and assigns.

9.203 “Participant” shall mean any financial institution that acquires and holds a participation in the interest of any Lender in any of the Loans and Letter of Credit Accommodations in conformity with the provisions of Section 13.7 of this Agreement governing participations.

9.204 “Patriot Act” shall have the meaning set forth in Section 8.32 hereof.

9.205 “Payment Recipient” has the meaning provided in Section 13.13.

9.206 “Permits” shall have the meaning set forth in Section 8.7(b) hereof.

9.207 “Permitted Discretion” shall mean a determination made in good faith in the exercise of Administrative Agent’s reasonable business judgment based on how an asset-based lender with similar rights providing a credit facility of the type set forth herein would act in similar circumstances at the time with the information then available to it.

9.208 “Person” or “person” shall mean any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Code), limited liability company, limited liability partnership, business trust,

unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

9.209 “Pharmaceutical Laws” shall mean federal, state and local laws, rules or regulations, codes, orders, decrees, judgments or injunctions issued, promulgated, approved or entered, relating to dispensing, storing or distributing prescription medicines or products, including laws, rules or regulations relating to the qualifications of Persons employed to do the same.

9.210 “Pharmacy Receivables” means as to each Borrower, all present and future rights of such Borrower to payment from a Third Party Payor arising from the sale of prescription drugs by such Borrower (it being understood that the portion of the purchase price for such prescription drugs payable by the purchaser of such prescription drugs or any Person other than a Third Party Payor shall not be deemed to be a Pharmacy Receivable).

9.211 “Plan” means an employee benefit plan (as defined in Section 3(3) of ERISA) which any Borrower or Guarantor sponsors, maintains, or to which it makes, is making, or is

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obligated to make contributions, or in the case of a Multiemployer Plan has made contributions at any time during the immediately preceding six (6) plan years.

9.212 “Portal” has the meaning specified in [Section 6.5](#).

9.213 “Prescription Files” shall mean, as to each Borrower and Guarantor, all of such Borrower's or Guarantor's now owned or hereafter existing or acquired retail customer files, (a) including prescriptions for retail customers and other medical information related thereto, maintained by the retail pharmacies of Borrowers and Guarantors, wherever located, and (b) the pharmaceutical customer list owned and controlled by any Borrower or Guarantor relating to certain items and services, including, without limitation, any drug price data, drug eligibility data, clinical drug information and health information of a pharmaceutical customer that is not protected under Sections 1171 through 1179 of the Social Security Act or other applicable law.

9.214 “Pro Forma Basis” shall mean, for purposes of calculating retail sales in Section 10.1(i) for the immediately preceding fiscal year and for purposes of calculating revenues in Section 10.1(n) for the immediately preceding fiscal year, that pro forma effect will be given to the Nash-Finch Merger, any acquisition or investment permitted under Section 9.10(j) hereof and sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, in each case, that occurred during such immediately preceding fiscal year being used for such purpose as if such event occurred on the first day of such immediately preceding fiscal year.

9.215 “Pro Rata Share” shall mean:

(a) with respect to a Tranche A Lender's obligation to make Tranche A Revolving Loans and to acquire interests in Swing Line Loans, Special Administrative Agent Advances and Letter of Credit Accommodations and receive payments of interest, fees, and principal with respect thereto, the fraction (expressed as a percentage) the numerator of which is such Tranche A Lender's Tranche A Commitment and the denominator of which is the aggregate amount of all of the Tranche A Commitments of the Tranche A Lenders, as adjusted from time to time in accordance with the provisions of Section 13.7 hereof; provided, that, if the Tranche A Commitments have been terminated, the numerator shall be the unpaid amount of such Tranche A Lender's Tranche A Revolving Loans and its interest in the Swing Line Loans, Special

Administrative Agent Advances and Letter of Credit Accommodations and the denominator shall be the aggregate amount of all unpaid Tranche A Revolving Loans, Swing Line Loans, Special Administrative Agent Advances and Letter of Credit Accommodations;

(b) with respect to a Tranche A-1 Lender's obligation to make Tranche A-1 Revolving Loans and receive payments of interest, fees, and principal with respect thereto, the fraction (expressed as a percentage) the numerator of which is such Tranche A-1 Lender's Tranche A-1 Commitment and the denominator of which is the aggregate amount of all of the Tranche A-1 Commitments of the Tranche A-1 Lenders, as adjusted from time to time in accordance with the provisions of Section 13.7 hereof;

(c) [reserved];

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(d) with respect to all other matters (including, without limitation, the indemnification obligations arising under Section 11.5 hereof), at any time shall mean, as to any Lender, the fraction (expressed as a percentage) the numerator of which is such Lender's aggregate Commitments and the denominator of which is the aggregate amount of all of the Commitments of Lenders, as adjusted from time to time in accordance with the provisions Section 13.7 hereof; provided, that, if the Commitments have been terminated, the numerator shall be the unpaid amount of such Lender's Loans and its interest in the Swing Line Loans, Special Administrative Agent Advances and Letter of Credit Accommodations and the denominator shall be the aggregate amount of all unpaid Loans, Swing Line Loans, Special Administrative Agent Advances and Letter of Credit Accommodations.

9.216 "Provision for Taxes" shall mean an amount equal to all taxes imposed on or measured by net income, whether Federal, State, Provincial, county or local, and whether foreign or domestic, that are paid or payable by any Person in respect of any period in accordance with GAAP.

9.217 "QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

9.218 "QFC Credit Support" has the meaning specified in Section 13.12.

9.219 "Qualified Debt Agent" shall mean the entity acting in the capacity as agent or trustee, as applicable, with respect to a Qualified Debt Offering and any successor or replacement agent or trustee, as applicable, and their respective successors and assigns.

9.220 "Qualified Debt Intercreditor Agreement" shall mean, in form and substance reasonably satisfactory to Administrative Agent and the Required Lenders, the Intercreditor Agreement entered into on the date that Borrowers incur Indebtedness permitted to be incurred pursuant to Section 9.9(f) hereof, by and between Administrative Agent and each set of holders of such debt, as applicable (or their agent or trustee, as applicable), as acknowledged and agreed to by Borrowers and Guarantors, pursuant to which Administrative Agent shall subordinate its lien on the Qualified Debt Offering Priority Collateral (to no less than a second priority lien) and the holders of such debt (or their agent or trustee, as applicable) shall subordinate its lien on all Collateral other than the Qualified Debt Offering Priority Collateral, as the same be amended, modified, supplemented, extended, renewed, restated or replaced.

9.221 "Qualified Debt Offering" shall mean, at the option of the Borrowers, in each case, pursuant to and in accordance with the terms of Section 9.9(f) hereof, one or

more (i) term loans made to the Borrowers or Guarantors after the Effective Date or (ii) senior notes issued by any Borrower or Guarantor after the Effective Date.

9.222 “Qualified Debt Offering Priority Collateral” shall mean, after the date that Borrowers or Guarantors have incurred Indebtedness pursuant to Section 9.9(f) hereof, collectively, that portion of the Collateral now owned or at any time hereafter acquired by any Borrower or Guarantor or in which any Borrower or Guarantor now has or at any time in the future may acquire any right, title or interest, consisting of

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(a) Equipment (other than Equipment that constitutes Eligible Equipment or Eligible Rolling Stock as of the date of the incurrence of such Indebtedness),

(b) Real Property and fixtures (other than Real Property that constitutes Eligible Real Property as of the date of the incurrence of such Indebtedness),

(c) Intellectual Property,

(d) instruments, documents, investment property, letters of credit, supporting obligations and chattel paper, in each case, to the extent that any amounts payable under or in connection with any of the items or types of assets described in clauses (a) through (c) above are evidenced by the items described in this clause (d) and

(e) all proceeds and products of any of the items or types of assets described in clauses (a) through (d) above.

9.223 “Real Property” shall mean all now owned and hereafter acquired real property of each Borrower and Guarantor, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located, including the real property and related assets more particularly described in the Mortgages.

9.224 “Realty Reserves” shall mean such Reserves as the Administrative Agent from time to time determines in its Permitted Discretion as being appropriate to reflect the impediments to Administrative Agent’s ability to realize upon any Eligible Real Property. Without limiting the generality of the foregoing, Realty Reserves may include (but are not limited to) (a) Environmental Compliance Reserves, (b) Reserves for (i) municipal taxes and assessments that may be required to be repaid in connection with any sale or other disposition of any of such Real Property, (ii) at any time, repairs required to maintain the Real Property at such time and/or to prepare it for a sale or other disposition, (iii) remediation of title defects, and (c) Reserves for Indebtedness secured by liens that are pari passu with, or have priority over, the lien of the Administrative Agent.

9.225 “Receivables” shall mean all of the following now owned or hereafter arising or acquired property of each Borrower and Guarantor: (a) all Accounts; (b) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; (c) all payment intangibles of such Borrower or Guarantor; (d) letters of credit, indemnities, guarantees, security or other deposits and proceeds thereof issued payable to any Borrower or Guarantor or otherwise in favor of or delivered to any Borrower or Guarantor in connection with any Account; or (e) all other accounts, contract rights, chattel paper, instruments, notes, general intangibles and other forms of obligations owing to any Borrower or Guarantor, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles),

rendition of services or from loans or advances by any Borrower or Guarantor or to or for the benefit of any third person (including loans or advances to any Affiliates or Subsidiaries of any Borrower or Guarantor) or otherwise associated with any Accounts, Inventory or general intangibles of any Borrower or Guarantor (including, without limitation, choses in action, causes of action, tax

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refunds, tax refund claims, any funds which may become payable to any Borrower or Guarantor in connection with the termination of any Plan or other employee benefit plan and any other amounts payable to any Borrower or Guarantor from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which any Borrower or Guarantor is a beneficiary).

9.226 “Records” shall mean, as to each Borrower and Guarantor, all of such Borrower’s and Guarantor’s present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any Account Debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of any Borrower or Guarantor with respect to the foregoing maintained with or by any other person).

9.227 “Reference Bank” shall mean Wells Fargo Bank, National Association, or such other bank as Administrative Agent may from time to time designate.

9.228 “Refinancing Indebtedness” shall have meaning set forth in Section 9.9 hereof.

9.229 “Register” shall have the meaning set forth in Section 13.7 hereof.

9.230 “Required Lenders” shall mean, at any time, those Lenders whose Pro Rata Shares aggregate fifty-one (51%) percent or more of the aggregate of the Commitments of all Lenders, or if the Commitments shall have been terminated, Lenders to whom at least fifty-one (51%) percent of the then outstanding Obligations are owing; provided, that, (a) the Commitment of any Defaulting Lender shall be disregarded in the determination of the Required Lenders, (b) at any time that there are two (2) or more Lenders, “Required Lenders” must include at least two (2) Lenders (who are not Affiliates of one another), and (c) to the extent that the Pro Rata Shares of Wells and Bank of America aggregate fifty-one (51%) percent or more of the aggregate of the Commitments of all Lenders, “Required Lenders” must include at least three (3) Lenders (who are not Affiliates of one another). For purposes of calculating Pro Rata Share, the Commitments of any Defaulting Lender in determining Required Lenders at any time shall be deemed to be zero.

9.231 “Required Tranche A Lenders” shall mean, at any time, those Tranche A Lenders whose Pro Rata Shares aggregate fifty-one (51%) percent or more of the aggregate of the Tranche A Commitments of all Tranche A Lenders, or if the Tranche A Commitments shall have been terminated, Tranche A Lenders to whom at least fifty-one (51%) percent of the then outstanding Obligations in respect of Tranche A Revolving Loans are owing; provided, that, (a) the Commitment of any Defaulting Lender shall be disregarded in the determination of the Required Tranche A Lenders, (b) at any time that there are two (2) or more Tranche A Lenders, “Required Tranche A Lenders” must include at least two (2) Tranche A Lenders (who are not Affiliates of one another), and

(c) to the extent that the Pro Rata Shares of Wells and Bank of America aggregate fifty-one (51%) percent or more of the aggregate of the Tranche A

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Commitments of all Tranche A Lenders, "Required Tranche A Lenders" must include at least three (3) Tranche A Lenders (who are not Affiliates of one another). For purposes of calculating Pro Rata Share, the Commitments of any Defaulting Lender in determining Required Tranche A Lenders at any time shall be deemed to be zero.

9.232 "Required Tranche A-1 Lenders" shall mean, at any time, those Tranche A-1 Lenders whose Pro Rata Shares aggregate fifty-one (51%) percent or more of the aggregate of the Tranche A-1 Commitments of all Tranche A-1 Lenders, or if the Tranche A-1 Commitments shall have been terminated, Tranche A-1 Lenders to whom at least fifty-one (51%) percent of the then outstanding Obligations in respect of Tranche A-1 Revolving Loans are owing; provided, that, (a) the Commitment of any Defaulting Lender shall be disregarded in the determination of the Required Tranche A-1 Lenders, and (b) at any time that there are two (2) or more Tranche A-1 Lenders, "Required Tranche A-1 Lenders" must include at least two (2) Tranche A-1 Lenders (who are not Affiliates of one another). For purposes of calculating Pro Rata Share, the Commitments of any Defaulting Lender in determining Required Tranche A-1 Lenders at any time shall be deemed to be zero.

9.233 "Reserves" shall mean as of any date of determination, such amounts as Administrative Agent may from time to time establish and revise in its Permitted Discretion reducing the amount of Loans and Letter of Credit Accommodations which would otherwise be available to any Borrower under the lending formula(s) provided for herein: (a) to reflect events, conditions, contingencies or risks which adversely affect, or have a reasonable likelihood of adversely affecting (i) the assets or business of Borrowers, including the Collateral or its value or the amount that might be obtained upon the sale or other disposition or realization on such Collateral or (ii) the security interests and other rights of Administrative Agent or any Lender in the Collateral (including the enforceability, perfection and priority thereof) or (b) to reflect Administrative Agent's good faith belief that any collateral report or financial information furnished by or on behalf of any Borrower or Obligor to Administrative Agent is or was incomplete, inaccurate or misleading in any material respect or (c) to reflect outstanding Letter of Credit Accommodations as provided in Section 2.4 hereof or (d) in respect of any state of facts which Administrative Agent determines in good faith constitutes a Default or an Event of Default. Without limiting the generality of the foregoing, Reserves may, at Administrative Agent's option in its Permitted Discretion, be established to reflect: (i) chargebacks with respect to Accounts, (ii) returns, discounts, claims, credits and allowances of any nature that are not paid pursuant to the reduction of Accounts, (iii) the sales, excise or similar taxes included in the amount of any Accounts reported to Administrative Agent, (iv) a change in the turnover, age or mix of the categories of Inventory or Rolling Stock that adversely affects the aggregate value of all Inventory or Rolling Stock, as the case may be, (v) variances between the perpetual inventory records of Borrowers (to the extent such perpetual inventory records are maintained) and the results of the test counts of the Inventory that is subject to such perpetual inventory records conducted by Administrative Agent with respect thereto in excess of the percentage acceptable to Administrative Agent, (vi) variances between the inventory records of Borrowers and Guarantors and the results of test counts or physical counts of inventory with respect thereto, (vii) variances between the stock ledger inventory report for non-perishable items in the Retail Division and the general ledger with respect thereto; (viii) amounts owing by Borrowers to Credit Card Issuers or Credit Card Processors in connection with the Credit Card Agreements, (ix) amounts due or to

become due in respect of sales, excise, use and/or withholding taxes, (x) liabilities of any Borrower or Guarantor that are entitled to receive the benefit of a security interest or trust pursuant to the PACA, the PSA or any other similar state law (provided, that, as of the Effective Date, Borrowers represent that there are no such liabilities under the PSA since Borrowers have written agreements providing for the extension of credit to them for all purchases of meat, meat products and livestock products by Borrowers), (xi) inventory shrinkage, (xii) the aggregate amount of merchandise gift certificates and coupons, (xiii) any rental payments, service charges or other amounts to become due to lessors of real property to the extent Inventory, Equipment, Rolling Stock or Records are located in or on such property or such Records are needed to monitor or otherwise deal with the Collateral (except for rents and amounts due for the lease of Real Property by Borrowers where Administrative Agent has received a Collateral Access Agreement in a form acceptable to Administrative Agent, provided, that, in the event that Administrative Agent has not received a Collateral Access Agreement or has received a Collateral Access Agreement that does not have terms that are acceptable to Administrative Agent for any retail store location that is leased by a Borrower, the Reserves established in respect of such location pursuant to this clause (xiii) shall not exceed at any time the lesser of (A) the aggregate of amounts payable to the owners and lessors of such location for the next two (2) months from any such time and including amounts if any, then outstanding and unpaid owed by a Borrower to such owners and lessors or (B) the value of the Eligible Equipment, Eligible Inventory and Eligible Rolling Stock at such location to the extent included in the Tranche A Borrowing Base or the Tranche A-1 Borrowing Base, except that such limitation on the amount of the Reserves shall not apply at any time that a Default or Event of Default shall exist or have occurred and be continuing, or a notice of any default or event of default under the lease with respect to such location has been received by or on behalf of any Borrower or Guarantor (except where the existence of the default specified in such notice is being disputed in good faith by such Borrower or Guarantor provided that such Borrower or Guarantor is continuing to pay rent and all other amounts payable under the lease with respect to such premises or if not, then is paying such rent and other amounts into escrow so that such funds will be available to the lessor in the event that such Borrower or Guarantor does not succeed in such dispute) or a Borrower has granted to the owner and lessor a security interest or lien upon any assets of such Borrower, (xiv) reductions in the number of repeat prescriptions, the average volume of prescriptions being filled, or the change in the mix of the types of payors with respect to sales of prescriptions, or any other changes to the factors identified in any appraisal that adversely affect the amount that may be recovered by Administrative Agent from the sale or other disposition of the Prescription Files (provided, that, Borrowers may at any time and from time to time obtain appraisals that satisfy the requirements of Administrative Agent provided for herein with respect to the Prescription Files, and to the extent that the Tranche A Borrowing Base or the Tranche A-1 Borrowing Base has been adjusted to reflect the then current value of the Eligible Prescription Files based on the results of such appraisal, such Reserves shall not be established), (xv) any statutory or regulatory changes after the Effective Date, or as to Ohio and Michigan laws are not disclosed in the opinions of counsel to Borrowers addressed and delivered to Administrative Agent on the Effective Date, that adversely affect the transferability of the Prescription Files, (xvi) [reserved], (xvii) the Tax Stamps Reserve, (xviii) customs duties and other costs to release Inventory which is being imported into the United States, (xix) Customer Credit Liabilities, (xx) Realty Reserves, and (xxi) premiums payable under Eligible Life Insurance Policies. To the extent that such Reserve is in respect of amounts that may be payable to third parties, the

Administrative Agent may, at its option, but without duplication, deduct such Reserve from (A) the Tranche A Maximum Credit at any time that the Tranche A Maximum Credit is less than the amount of the Tranche A Borrowing Base or (B) the Tranche A-1 Maximum Credit at any time that the Tranche A-1 Maximum Credit is less than the amount of the Tranche A-1 Borrowing Base. To the extent Administrative Agent may revise the lending formulas used to determine the Tranche A Borrowing Base or the Tranche A-1 Borrowing Base or establish new criteria or revise existing criteria for Eligible Accounts or Eligible Inventory so as to address any circumstances, condition, event or contingency in a manner satisfactory to Administrative Agent, Administrative Agent shall not establish a Reserve for the same purpose. The amount of any Reserve established by Administrative Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Administrative Agent in good faith.

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

9.235 “Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing to the Administrative Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder, including, with respect to the Portal, any person authorized and authenticated through the Portal in accordance with the Administrative Agent’s procedures for such authentication. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

9.236 “Retail Division” shall mean the operations of Family Fare, Prevo, Seaway, Gruber RE, Spartan Fuel, Nash-Finch, Super Food, U Save and Erickson’s (together with their respective successors and assigns) consisting of ownership by such Borrowers and their Subsidiaries of retail supermarkets, pharmacies, fuel centers and convenience stores, together with all related retail operations by them.

9.237 “Revolving Loans” shall mean, collectively, the Tranche A Revolving Loans and the Tranche A-1 Revolving Loans.

9.238 “Rolling Stock” shall mean, as to each Borrower, all of such Borrower’s trucks, trailers, tractors and intermodal units for use in connection therewith, wherever located.

9.239 “Sale and Lease-Back Transaction” shall mean the sale by any Borrower or Guarantor of real property pursuant to any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any real property, whether now owned or hereafter acquired, and thereafter rent or lease such real property that it intends to use for substantially the same purpose or purposes as the real property being sold or transferred.

9.240 “Sanctioned Entity” shall mean, at any time (a) a country, region or territory or a government of a country or territory, (b) an agency of the government of a country, region or

territory, (c) an organization directly or indirectly controlled by a country, region or territory or its government, (d) a Person resident in or determined to be resident in a country, region or territory, in each case of clauses (a) through (d), that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

9.241 “Sanctioned Person” shall mean, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC’s consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

9.242 “Sanctions” shall mean individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty’s Treasury of the United Kingdom, or (d) any other Governmental Authority with jurisdiction over any Lender or any Borrower, any Guarantor or any of its or their respective Subsidiaries or Affiliates.

9.243 “Secured Parties” shall mean, collectively, (a) Administrative Agent, (b) Issuing Bank, (c) Lenders and (d) Bank Product Providers; provided, that, as to any Bank Product Provider, only to the extent of the Obligations owing to such Bank Product Provider.

9.244 “Senior Note Indenture” shall mean the Indenture, dated December 6, 2012, by and between Parent, as issuer, and The Bank of New York Trust Company, N.A., as trustee, with respect to the Senior Notes, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

9.245 “Senior Notes” shall mean, collectively, the 6.625% Senior Notes Due 2016 issued by Parent in the original aggregate principal amount not to exceed \$50,000,000 pursuant to the Senior Note Indenture, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

9.246 “Senior Notes Trustee” shall mean The Bank of New York Trust Company, N.A., as trustee under the Senior Notes, and its successors and assigns, and any replacement or successor trustee thereunder.

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

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

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

9.250 “Social Security Act” shall mean the Social Security Act, 92 U.S.C. Section 1396, et seq, as the same now exists or may from time to time hereafter be

amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

9.251 “SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

9.253 “SOFR Borrowing” means a borrowing comprised of SOFR Rate Loans.

9.254 “SOFR Loan Notice” means a notice for a SOFR Borrowing or continuation pursuant to Section 6.5(b), which shall be substantially in the form of Exhibit H.

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

9.256 “Solvent” shall mean, at any time with respect to any Person, that at such time such Person (a) is able to pay its debts as they mature and has (and has a reasonable basis to believe it will continue to have) sufficient capital (and not unreasonably small capital) to carry on its business consistent with its practices as of the Effective Date, and (b) the assets and properties of such Person at a fair valuation (and including as assets for this purpose at a fair valuation all rights of subrogation, contribution or indemnification arising pursuant to any guarantees given by such Person) are greater than the Indebtedness of such Person, and including subordinated and contingent liabilities computed at the amount which, such person has a reasonable basis to believe, represents an amount which can reasonably be expected to become an actual or matured liability (and including as to contingent liabilities arising pursuant to any guarantee the face amount of such liability as reduced to reflect the probability of it becoming a matured liability).

9.257 “Special Administrative Agent Advances” shall have the meaning set forth in Section 12.11 hereof.

9.258 “Specified Representations” shall mean the representations and warranties set forth in Sections 8.1, the first sentence of 8.4, the second sentence of 8.7(a), 8.12(d), 8.24, 8.29, 8.31 and 8.32 herein.

9.259 “SPTs” has the meaning specified therefor in Section 2.9.

9.260 “SSD” shall mean SS Delaware, Inc., a Delaware corporation, and its successors and assigns.

9.261 “Store Accounts” shall have the meaning set forth in Section 6.3 hereof.

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9.262 “Subsidiary” or “subsidiary” shall mean, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

9.263 “Supermajority Lenders” shall mean, at any time, those Lenders whose Pro Rata Shares aggregate sixty-six and two-thirds (66 2/3%) percent or more of the aggregate of the Commitments of all Lenders, or if the Commitments shall have been terminated, Lenders to whom at least sixty-six and two-thirds (66 2/3%) percent of the then outstanding Obligations are owing; provided, that, (a) the Commitment of any Defaulting Lender shall be disregarded in the determination of the Supermajority Lenders, and (b) at any time that there are two (2) or more Lenders, “Supermajority Lenders” must include at least two (2) Lenders (who are not Affiliates of one another). For purposes of calculating Pro Rata Share, the Commitments of any Defaulting Lender in determining Supermajority Lenders at any time shall be deemed to be zero.

9.264 “Supported QFC” has the meaning specified in [Section 13.12](#).

9.265 “Sustainability Linked Loan Principles” means the Sustainability Linked Loan Principles as most recently published by the Loan Market Association, the Asia Pacific Loan Market Association, and the Loan Syndications & Trading Association.

9.266 “Sustainability Structuring Agent” shall mean Wells Fargo Securities LLC, in its capacity as sustainability structuring agent on behalf of the Lenders pursuant to the terms hereof and any replacement or successor agent hereunder.

9.267 “Swing Line Lender” shall mean Wells Fargo Capital Finance, LLC, in its capacity as the lender of Swing Line Loans, and its successors and assigns.

9.268 “Swing Line Loans” shall mean loans now or hereafter made by Swing Line Lender on a revolving basis pursuant to the Credit Facility (involving advances, repayments and readvances) as set forth in Section 2.2 hereof.

9.269 “Swing Line Loan Limit” shall mean \$100,000,000.

9.270 “Tax Stamps” shall mean all tax stamps, excise tax stamps, adhesive stamps, meter stamps and similar stamps, which in each case evidence the valid and effective payment of cigarette taxes to applicable Governmental Authorities.

9.271 “Tax Stamps Reserve” shall mean, at any given time, with respect to any Eligible Unaffixed Tax Stamp Inventory, such reserves as the Administrative Agent from time to time determines in its Permitted Discretion as being appropriate with respect to the sum of the “net stamp tax obligations” in each State in which any Borrower purchases Tax Stamps, wherein the

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“net stamp tax obligations” for each State are equal to the aggregate obligations and/or liabilities owing to any Governmental Authority in such State for purchases of Tax Stamps (including any checks or instruments of payment issued by or on behalf of any Borrower which are held by any taxing authority in such State and not yet submitted for presentment and collection), and the aggregate obligations and/or liabilities owing to any Governmental Authority in such State based on an audit of a Borrowers' monthly Tax Stamp report delivered to such Governmental Authority in such State but excluding all such obligations and/or liabilities owing to any Governmental Authority in such States as determined by Administrative Agent in its Permitted Discretion; provided, that, the amount of any such Reserve shall be reduced by the amount payable under any surety bond issued to or for the benefit of any Governmental Authority of a State so long as Administrative Agent shall have received an opinion letter, in form and substance reasonably satisfactory to the Administrative Agent, from counsel licensed in such State opining that amounts owing to such State would not be entitled to payment from any assets of the Borrowers (or held by them) prior to the Obligations, whether as a result of amounts collected by any Borrower in respect of cigarette taxes being trust funds or any

Borrower acting as agent for such State for purposes of the collection of such cigarette taxes, as an offset against Tax Stamps held or used by such Borrower or otherwise.

9.272 “Term SOFR” means,

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

Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

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

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Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day.

9.273 “Term SOFR Adjustment” means a percentage equal to 0.10% per annum.

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

9.275 “Term SOFR Rate Loan” means a Loan that bears interest at a rate determined by reference to Adjusted Term SOFR (other than pursuant to clause (b) of the definition of “Base Rate”).

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

9.277 “Third Party Payor” shall mean any Person, such as, a Fiscal Intermediary, Blue Cross/Blue Shield, or private health insurance company, which is obligated to reimburse or otherwise make payments to health care providers who provide medical care or medical assistance or other goods or services for eligible patients under Medicare, Medicaid or any private insurance contract.

9.278 “Total Borrowing Base” shall mean, the sum of the Tranche A Borrowing Base and the Tranche A-1 Borrowing Base.

9.279 “Total Funded Indebtedness” shall mean, as of any date of determination, with respect to Parent and its Subsidiaries (determined on a consolidated basis), without duplication, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments (including, but not limited to, mortgages); (b) representing the balance deferred and unpaid of the purchase price of any property or services (other than an account payable to a trade creditor (whether or not an Affiliate) incurred in the ordinary course of business of such Person and payable in accordance with customary trade practices, but including, without limitation, all earn-outs and similar deferred payment obligations); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker’s acceptances, bank guaranties, drafts or similar documents or instruments issued for such Person’s account; (e) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP, (f) in respect of letters of credit issued on behalf of the Borrowers and Guarantors (and/or in connection with the Borrowers and Guarantors have reimbursement obligations) and (g) all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements, hedging agreements, collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values.

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9.280 “Tranche A Borrowing Base” shall mean, at any time, the amount equal to:

(a) ninety (90%) percent multiplied by the net amount of Eligible Accounts (other than those arising from Pharmacy Receivables, Credit Card Receivables and Military Receivables); plus

(b) ninety (90%) percent multiplied by the net amount of Eligible Accounts arising from Pharmacy Receivables; plus

(c) ninety (90%) percent multiplied by the net amount of Eligible Credit Card Receivables; plus

(d) eighty-five (85%) percent multiplied by the net amount of (after deducting, without duplication, the Military Receivables Deduction Amount) Eligible Military Receivables; plus

(e) ninety (90%) percent of the Net Recovery Percentage for the Eligible Inventory (other than Eligible Unaffixed Tax Stamp Inventory) of the Retail Division multiplied by the Value of such Eligible Inventory; plus

(f) ninety (90%) percent of the Net Recovery Percentage for the Eligible Inventory (other than Eligible Unaffixed Tax Stamp Inventory) of the Distribution Division (including, for this purpose, Inventory which gives rise to Military Receivables) multiplied by the Value of such Eligible Inventory; plus

- (g) ninety (90%) percent of the Net Recovery Percentage of Eligible In-Transit Inventory multiplied by the Value of such Eligible In-Transit Inventory; plus
  - (h) ninety (90%) percent of Eligible Unaffixed Tax Stamp Inventory; plus
  - (i) the lesser of: (A) ninety-five percent (95%) of the Cash Surrender Value of Eligible Life Insurance Policies and (B) \$10,000,000, plus
  - (j) the Tranche A Prescription File Availability; plus
  - (k) the Tranche A Real Estate Availability; plus
  - (l) the Tranche A Equipment Availability; plus
  - (m) the Tranche A Rolling Stock Availability; plus
  - (n) ninety-eight (98%) percent of Eligible Cash and Cash Equivalents;
- minus
- (o) Reserves.

The amounts of Eligible Inventory of any Borrower shall, at Administrative Agent's option, be determined based on the lesser of the amount of Inventory set forth in the general

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ledger of such Borrower, as reconciled, or the perpetual inventory record or stock ledger record, as applicable, maintained by such Borrower.

9.281 "Tranche A Commitment" shall mean, at any time, as to each Tranche A Lender, the principal amount set forth next to such Lender's name on Exhibit F hereto designated as the Tranche A Commitment of such Lender or on Schedule 1 to the Assignment and Acceptance Agreement pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 13.7 hereof, as the same may be adjusted from time to time in accordance with the terms hereof; sometimes being collectively referred to herein as "Tranche A Commitments".

9.282 "Tranche A Equipment Availability" shall mean eighty-five (85%) percent of the forced liquidation value of Eligible Equipment as set forth in the most recent appraisal of such Equipment received by Administrative Agent in accordance with Section 7.4 hereof after the Effective Date, provided, that, (a) the Tranche A Equipment Availability shall be established five (5) Business Days after the receipt by Administrative Agent of the final written report of such appraisal in the amount determined based on such appraisal, and (b) commencing on the first day of the next calendar month after the Tranche A Equipment Availability is established, and as of the first day of each calendar month thereafter, the percentage set forth above shall be reduced by an amount equal to such initial percentage divided by sixty (60) (it being understood that the percentage above shall be 85% as of the Amendment No. 6 Effective Date and will reduce thereafter on January 1, 2023 and on the first day of each calendar month thereafter in accordance with this clause (b)).

9.283 "Tranche A Lenders" shall mean, collectively, the Lenders having a Tranche A Commitment or all or a portion of the Tranche A Loans owing to it; sometimes being referred to herein individually as a "Tranche A Lender".

9.284 "Tranche A Maximum Credit" shall mean the amount of \$975,000,000 (subject to adjustment as provided in Section 2.6 hereof).

9.285 “Tranche A Prescription File Availability” shall mean ninety (90%) percent of the “net orderly liquidation value” of the Eligible Prescription Files based on the most recent acceptable appraisal thereof received by Administrative Agent in accordance with Section 7.5 hereof using the average of the average recovery under each of the percent of script sales method, the dollars per average number of scripts filled per week method and the percent of past year script margin method (or such other methodology or methodologies as may be acceptable to Administrative Agent).

9.286 “Tranche A Real Estate Availability” shall mean the lesser of (a) seventy-five (75%) percent of the appraised fair market value of the Eligible Real Property as set forth in the most recent appraisal of such Real Property received by Administrative Agent in accordance with Section 7.4 hereof, which amount, as of the date of Amendment No. 6, is \$339,671,551, provided, that, commencing January 1, 2023, such percentage shall be reduced to seventy-four (74%) percent and by an additional one hundred (100) basis points as of the first day of each calendar quarter thereafter until it is sixty (60%) percent, and (b) an amount equal to thirty (30%)

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percent of the Tranche A Borrowing Base as then in effect (after giving effect to any Environmental Compliance Reserves).

9.287 “Tranche A Revolving Loans” shall mean the loans now or hereafter made by or on behalf of any Tranche A Lender or by Administrative Agent for the account of any Tranche A Lender on a revolving basis pursuant to the Credit Facility (involving advances, repayments and readvances) as set forth in Section 2.1(a)(i) hereof. Swing Line Loans shall be considered Tranche A Revolving Loans, except as otherwise provided herein.

9.288 “Tranche A Rolling Stock Availability” shall mean eighty-five (85%) percent of the net orderly liquidation value of the Eligible Rolling Stock as set forth in the most recent acceptable appraisal (or acceptable updates of existing appraisals) of such Rolling Stock received by Administrative Agent in accordance with Section 7.6 hereof, provided, that commencing January 1, 2023, such percentage shall be reduced to eighty-two (82%) percent and by an additional 300 basis points as of the first day of each calendar quarter thereafter.

9.289 “Tranche A-1 Borrowing Base” shall mean, at any time, the amount equal to:

(a) five (5%) percent multiplied by the net amount of Eligible Accounts arising from Pharmacy Receivables; plus

(b) five (5%) percent multiplied by the net amount of Eligible Credit Card Receivables; plus

(c) five (5%) percent multiplied by the net amount of (after deducting, without duplication, the Military Receivables Deduction Amount) Eligible Military Receivables; plus

(d) five (5%) percent multiplied by the net amount of the Net Recovery Percentage for the Eligible Inventory (other than Eligible Unaffixed Tax Stamp Inventory) of the Retail Division multiplied by the Value of such Eligible Inventory; plus

(e) five (5%) percent multiplied by the net amount of the Net Recovery Percentage for the Eligible Inventory (other than Eligible Unaffixed Tax Stamp Inventory) of the Distribution Division (including, for this purpose, Inventory which gives rise to Military Receivables) multiplied by the Value of such Eligible Inventory; plus

(f) five (5%) percent of the Net Recovery Percentage of Eligible In-Transit Inventory multiplied by the Value of such Eligible In-Transit Inventory; plus

(g) five (5%) percent of Eligible Unaffixed Tax Stamp Inventory; plus

(h) the Tranche A-1 Prescription File Availability; minus

(i) Reserves (without duplication of any Reserves established in respect of the Tranche A Borrowing Base).

The amounts of Eligible Inventory of any Borrower shall, at Administrative Agent's option, be determined based on the lesser of the amount of Inventory set forth in the general

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ledger of such Borrower, as reconciled, or the perpetual inventory record or stock ledger record, as applicable, maintained by such Borrower.

9.290 "Tranche A-1 Commitment" shall mean, at any time, as to each Tranche A-1 Lender, the principal amount set forth next to such Lender's name on Exhibit F hereto designated as the Tranche A-1 Commitment of such Lender or on Schedule 1 to the Assignment and Acceptance Agreement pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 13.7 hereof, as the same may be adjusted from time to time in accordance with the terms hereof; sometimes being collectively referred to herein as "Tranche A-1 Commitments".

9.291 "Tranche A-1 Lenders" shall mean, collectively, the Lenders having a Tranche A-1 Commitment or all or a portion of the Tranche A-1 Loans owing to it; sometimes being referred to herein individually as a "Tranche A-1 Lender".

9.292 "Tranche A-1 Maximum Credit" shall mean the amount of \$40,000,000.

9.293 "Tranche A-1 Prescription File Availability" shall mean five (5%) percent of the "net orderly liquidation value" of the Eligible Prescription Files based on the most recent acceptable appraisal thereof received by Administrative Agent in accordance with Section 7.5 hereof using the average of the average recovery under each of the percent of script sales method, the dollars per average number of scripts filled per week method and the percent of past year script margin method (or such other methodology or methodologies as may be acceptable to Administrative Agent).

9.294 "Tranche A-1 Revolving Loans" shall mean the loans now or hereafter made by or on behalf of any Tranche A-1 Lender or by Administrative Agent for the account of any Tranche A-1 Lender on a revolving basis pursuant to the Credit Facility (involving advances, repayments and readvances) as set forth in Section 2.1(a)(ii) hereof.

9.295 "UCC" shall mean the Uniform Commercial Code as in effect in the State of Illinois, and any successor statute, as in effect from time to time (except that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of Illinois on the Effective Date shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as Administrative Agent may otherwise determine).

9.296 "UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United

Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

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

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

9.299 “U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements for borrowings hereunder, such day is also a Business Day.

9.300 “U.S. Special Resolution Regimes” has the meaning specified in Section 13.12.

9.301 “Value” shall mean, as determined by Administrative Agent in good faith, with respect to Inventory, the lower of (A) cost computed on a first-in first-out basis in accordance with GAAP or (b) market value, provided, that, for purposes of the calculation of the Tranche A Borrowing Base and the Tranche A-1 Borrowing Base, (i) the Value of the Inventory shall not include: (A) the portion of the value of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Borrower (other than the profit of the Distribution Division for sales of Inventory to the Retail Division in the ordinary course of business consistent with current practices and for sales at prices no more than the Retail Division could purchase such Inventory from a person that is not an Affiliate), (B) the amount of cigarette taxes that are capitalized in inventory, or (C) write-ups or write-downs in value with respect to currency exchange rates and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent appraisal of the Inventory received and accepted by Administrative Agent prior to the Effective Date, if any (except to the extent that the method of calculation of the cost may be affected by the establishment of a reliable, consistent and accurate perpetual inventory system at the Retail Division for pharmacy Inventory or non-perishable Inventory).

9.302 “Voting Stock” shall mean with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

9.303 “Weighted Average Life to Maturity” shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the then outstanding principal amount of such Indebtedness into (b) the total of the product obtained by multiplying (A) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (B) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment.

9.304 “Wells” shall mean Wells Fargo Capital Finance, LLC, a national banking association, in its individual capacity, and its successors and assigns.

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

## **SECTION 10. CREDIT FACILITIES**

### **10.1 Loans.**

(a) Subject to and upon the terms and conditions contained herein:

(i) each Tranche A Lender severally (and not jointly) agrees to make its Pro Rata Share of Tranche A Revolving Loans to Borrowers from time to time in amounts requested by a Borrower (or Lead Borrower on behalf of Borrowers) up to the aggregate amount outstanding at any time equal to the Tranche A Commitment of such Lender, provided, that, after giving effect to any such Tranche A Revolving Loan, the principal amount of the Tranche A Revolving Loans, the Swing Line Loans and Letter of Credit Accommodations outstanding with respect to all Borrowers shall not exceed the lesser of (A) the Tranche A Borrowing Base at such time or (B) the Tranche A Maximum Credit at such time; and

(ii) each Tranche A-1 Lender severally (and not jointly) agrees to make its Pro Rata Share of Tranche A-1 Revolving Loans to Borrowers from time to time in amounts requested by a Borrower (or Lead Borrower on behalf of Borrowers) up to the aggregate amount outstanding at any time equal to the Tranche A-1 Commitment of such Lender, provided, that, after giving effect to any such Tranche A-1 Revolving Loan, the principal amount of the Tranche A-1 Revolving Loans outstanding with respect to all Borrowers shall not exceed the lesser of (A) the Tranche A-1 Borrowing Base at such time or (B) the Tranche A-1 Maximum Credit.

(b) Except in Administrative Agent's discretion, with the consent of all Lenders, or as otherwise provided herein, (i) the aggregate amount of the Loans (including Swing Line Loans) and the Letter of Credit Accommodations outstanding at any time shall not exceed the Maximum Credit, (ii) the aggregate amount of the Loans (including Swing Line Loans) and Letter of Credit Accommodations outstanding at any time shall not exceed the Total Borrowing Base, (iii) the aggregate amount of the Tranche A Loans, the Swing Line Loans and the Letter of Credit Accommodations outstanding at any time shall not exceed the lesser of the Tranche A Maximum Credit or the Tranche A Borrowing Base; and (iv) the aggregate amount of the Tranche A-1 Revolving Loans outstanding at any time shall not exceed the lesser of the Tranche A-1 Maximum Credit or the Tranche A-1 Borrowing Base. The aggregate amount of the Loans (including Swing Line Loans) and the Letter of Credit Accommodations outstanding at any time

shall not exceed the amount that would give rise to a default or event of default under the Senior Note Indenture or which would give rise to the obligation of Parent or any of its Subsidiaries to grant a lien on any assets to secure the Senior Notes.

(c) On the terms and subject to the conditions hereof, each Borrower (or Lead Borrower on behalf of Borrowers) may from time to time borrow, prepay and reborrow Revolving Loans and Swing Line Loans. No Tranche A Lender shall be required to make any Tranche A Revolving Loan, if, after giving effect thereto the aggregate outstanding principal amount of all Tranche A Revolving Loans of such Lender, together with such Lender's Pro Rata Share of the aggregate amount of all Loans, Swing Line Loans and Letter of Credit Obligations, would exceed such Lender's Tranche A Commitment. No Tranche A-1 Lender shall be required to make any Tranche A-1 Revolving Loan, if, after giving effect thereto the aggregate outstanding principal amount of all Tranche A-1 Revolving Loans of such Lender would exceed such Lender's Tranche A-1 Commitment.

(d) The first Revolving Loans made shall be Tranche A-1 Loans up to the amount equal to the lesser of the Tranche A-1 Borrowing Base or the Tranche A-1 Maximum Credit. Notwithstanding anything to the contrary contained herein, other than Swing Line Loans or Letter of Credit Accommodations, Borrowers shall not request any Tranche A Revolving Loans, and the Tranche A Lenders shall not be required to make any Tranche A Revolving Loans, unless and until the outstanding principal amount of the Tranche A-1 Revolving Loans at such time are equal to the lesser of the Tranche A-1 Borrowing Base or the Tranche A-1 Maximum Credit. In the event that at any time the outstanding principal amount of the Tranche A-1 Revolving Loans shall be less than the amount equal to the lesser of the Tranche A-1 Borrowing Base or the Tranche A-1 Maximum Credit, the first Revolving Loans requested by a Borrower (or Lead Borrower on behalf of a Borrower) shall be deemed to be Tranche A-1 Loans until such time as the outstanding principal amount of the Tranche A-1 Loans are equal to the lesser of the Tranche A-1 Borrowing Base or the Tranche A-1 Maximum Credit. Tranche A-1 Revolving Loans shall be solely Revolving Loans and all Letter of Credit Accommodations and Swing Line Loans shall be issued under the Tranche A Commitments and, with respect to Letter of Credit Accommodations, reserved against the Tranche A Borrowing Base as provided for in Section 2.4(d) hereof.

#### 10.2 Swing Line Loans.

(a) Subject to the terms and conditions contained herein, the Swing Line Lender agrees that it will make Swing Line Loans to each Borrower from time to time in amounts requested by such Borrower (or Lead Borrower on behalf of such Borrower) up to the aggregate amount outstanding equal to the Swing Line Loan Limit; provided, that, after giving effect to any such Swing Line Loan, the aggregate principal amount of the Tranche A Revolving Loans, Swing Line Loans and Letter of Credit Accommodations outstanding shall not exceed the lesser of (i) the Tranche A Borrowing Base at such time, or (ii) the Tranche A Maximum Credit at such time. Subject to the terms and conditions hereof, each Borrower (or Lead Borrower on behalf of Borrowers) may from time to time borrow, prepay and reborrow Swing Line Loans. Swing Line Lender shall not be required to make Swing Line Loans, if, after giving effect thereto, the aggregate outstanding principal amount of all Swing Line Loans would exceed the then existing Swing Line Loan Limit. Each Swing Line Loan shall be subject to all of the terms and

conditions applicable to other Base Rate Loans funded by the Lenders constituting Revolving Loans, except that all payments thereon shall be payable to the Swing Line Lender solely for its own account. All Revolving Loans and Swing Line Loans shall be subject to the settlement among Lenders provided for in Section 6.10 hereof.

(b) Upon the making of a Swing Line Loan, without further action by any party hereto, each Tranche A Lender shall be deemed to have irrevocably and unconditionally purchased and received from the Swing Line Lender, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Pro Rata Share in such Swing Line Loan. To the extent that there is no settlement in accordance with Section 6.10 below, the Swing Line Lender may at any time, require the Tranche A Lenders to fund their participations. From and after the date, if any, on which any Tranche A Lender has funded its participation in any Swing Line Loan, Administrative Agent shall promptly distribute to such Lender, not less than weekly, such Lender's Pro Rata Share of all payments of principal and interest received by Administrative Agent in respect of such Swing Line Loan.

10.3 [Reserved].

10.4 Letter of Credit Accommodations.

(a) Subject to and upon the terms and conditions contained herein, at the request of a Borrower, Administrative Agent agrees, for the ratable risk of each Tranche A Lender according to its Pro Rata Share, to provide or arrange for Letter of Credit Accommodations for the account of such Borrower containing terms and conditions acceptable to Administrative Agent and the issuer thereof (which issuer shall be Wells Fargo Bank, National Association, a Lender or such other institution reasonably acceptable to Administrative Agent and Lead Borrower (each, an "Issuing Bank")). Any payments made by or on behalf of Administrative Agent or any Tranche A Lender to any issuer thereof and/or related parties in connection with the Letter of Credit Accommodations provided to or for the benefit of a Borrower shall constitute additional Tranche A Revolving Loans to such Borrower pursuant to this Section 2 (or Special Administrative Agent Advances as the case may be).

(b) In addition to any charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations, Borrowers shall pay to Administrative Agent, for the benefit of the Tranche A Lenders, monthly a letter of credit fee on the daily outstanding balance of the Letter of Credit Accommodations during the immediately preceding month (or part thereof) at a rate equal to the percentage (on a per annum basis) set forth below if the Monthly Average Excess Availability for the immediately preceding calendar month is at or within the amounts indicated for such percentages, payable in arrears on the first Business Day of each succeeding month:

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<u>Tier</u>	<u>Monthly Average Excess Availability</u>	<u>Applicable Letter of Credit Fee Rate</u>
1	Greater than 60% of the Maximum Credit	1.25%
2	Less than or equal to 60% of the Maximum Credit	1.50%

Provided, that, (i) the applicable percentage shall be calculated and established once each month and shall remain in effect until adjusted thereafter after the end of the next

month based on the Monthly Average Excess Availability for the immediately preceding month, (ii) notwithstanding the amount of the Monthly Average Excess Availability, for each month prior to the month commencing June 1, 2014, the Applicable Letter of Credit Fee Rate shall be equal to the percentage set forth in Tier 2 of the schedule above and (iii) notwithstanding anything to the contrary contained herein, Administrative Agent may, and upon the written direction of Required Tranche A Lenders shall, require Borrowers to pay to Administrative Agent for the benefit of Tranche A Lenders, such letter of credit fee at a rate equal to two (2%) percent per annum plus the then Applicable Letter of Credit Fee Rate on such daily outstanding balance (A) for the period (1) from and after the effective date of termination or non-renewal hereof until Administrative Agent and Lenders have received full and final payment of all outstanding and unpaid Obligations which are not contingent and cash collateral or letter of credit, as Administrative Agent may specify, in the amounts and on the terms required under Section 13.1 hereof for contingent Obligations (notwithstanding entry of a judgment against any Borrower or Guarantor) and (2) from and after the date of the occurrence of an Event of Default and for so long as such Event of Default is continuing. Such letter of credit fee shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed and the obligation of Borrowers to pay such fee shall survive the termination of this Agreement.

(c) The Borrower requesting such Letter of Credit Accommodation shall give Administrative Agent two (2) Business Days' prior written notice of such Borrower's request for the issuance of a Letter of Credit Accommodation. Such notice shall be irrevocable and shall specify the original face amount of the Letter of Credit Accommodation requested, the effective date (which date shall be a Business Day and in no event shall be a date less than ten (10) days prior to the end of the then current term of this Agreement) of issuance of such requested Letter of Credit Accommodation, whether such Letter of Credit Accommodations may be drawn in a single or in partial draws, the date on which such requested Letter of Credit Accommodation is to expire (which date shall be a Business Day), the purpose for which such Letter of Credit Accommodation is to be issued, and the beneficiary of the requested Letter of Credit Accommodation. In no event shall the expiration or termination date of any Letter of Credit Accommodation be on or after five (5) Business Days prior to the Maturity Date. The Borrower requesting the Letter of Credit Accommodation shall attach to such notice the proposed terms of the Letter of Credit Accommodation.

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(d) In addition to being subject to the satisfaction of the applicable conditions precedent contained in Section 4 hereof and the other terms and conditions contained herein, no Letter of Credit Accommodations shall be available unless each of the following conditions precedent have been satisfied in a manner satisfactory to Administrative Agent: (i) the Borrower requesting such Letter of Credit Accommodation shall have delivered to the proposed issuer of such Letter of Credit Accommodation at such times and in such manner as such proposed issuer may require, an application, in form and substance satisfactory to such proposed issuer and Administrative Agent, for the issuance of the Letter of Credit Accommodation and such other documents as may be required pursuant to the terms thereof, and the form and terms of the proposed Letter of Credit Accommodation shall be satisfactory to Administrative Agent and such proposed issuer, (ii) as of the date of issuance, no order of any court, arbitrator or other Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount of the proposed Letter of Credit Accommodation, and no law, rule or regulation applicable to money center banks generally and no request or directive (whether or not having the

force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that the proposed issuer of such Letter of Credit Accommodation refrain from, the issuance of letters of credit generally or the issuance of such Letters of Credit Accommodation, and (iii) the Excess Availability, prior to giving effect to any Reserves with respect to such Letter of Credit Accommodations, on the date of the proposed issuance of any Letter of Credit Accommodations, shall be equal to or greater than: (A) if the proposed Letter of Credit Accommodation is for the purpose of purchasing Eligible Inventory and the documents of title with respect thereto are consigned to the issuer, the sum of (1) the percentage equal to one hundred (100%) percent minus the then applicable percentage with respect to Eligible Inventory set forth in the definition of the term Tranche A Borrowing Base multiplied by the Value of such Eligible Inventory, plus (2) freight, taxes, duty and other amounts which Administrative Agent estimates must be paid in connection with such Inventory upon arrival and for delivery to one of such Borrower's locations for Eligible Inventory within the United States of America and (B) if the proposed Letter of Credit Accommodation is for any other purpose or the documents of title are not consigned to the issuer in connection with a Letter of Credit Accommodation for the purpose of purchasing Inventory, an amount equal to one hundred (100%) percent of the face amount thereof and all other commitments and obligations made or incurred by Administrative Agent with respect thereto. Notwithstanding anything to the contrary contained herein, Issuing Bank shall not be obligated to issue a Letter of Credit Accommodation in respect of the obligation of a Borrower or Guarantor arising in connection with a lease of Real Property or an employment contract, (aa) in the case of a Letter of Credit Accommodation in connection with such a lease, with a face amount in excess of the amount equal to (x) the amount of rent under such lease, without acceleration, for the greater of one year or fifteen (15%) percent, not to exceed three (3) years, of the remaining term of such lease minus (y) the amount of any cash or other collateral to secure the obligations of a Borrower or Guarantor in respect of such lease and (bb) in the case of a Letter of Credit in connection with an employment contract, with a face amount in excess of the compensation provided by such contract, without acceleration, for a one year period. Effective on the issuance of each Letter of Credit Accommodation, a Reserve shall be established in the applicable amount set forth in Section 2.4(d)(iii)(A) or Section 2.4(d)(iii)(B).

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(e) Except in Administrative Agent's discretion, with the consent of all Lenders, the amount of all outstanding Letter of Credit Accommodations and all other commitments and obligations made or incurred by Administrative Agent or any Lender in connection therewith shall not at any time exceed \$100,000,000.

(f) Borrowers and Guarantors shall indemnify and hold Administrative Agent and Lenders harmless from and against any and all losses, claims, damages, liabilities, costs and expenses which Administrative Agent or any Lender may suffer or incur in connection with any Letter of Credit Accommodations and any documents, drafts or acceptances relating thereto, including any losses, claims, damages, liabilities, costs and expenses due to any action taken by any issuer or correspondent with respect to any Letter of Credit Accommodation, except to the extent of losses, claims, damages, liabilities, costs or expenses resulting from the gross negligence or willful misconduct of Administrative Agent or any Lender as determined pursuant to a final non-appealable order of a court of competent jurisdiction. As between Administrative Agent and Lenders, on the one hand, and Borrowers and Guarantors, on the other hand, and without limitation of any rights of any Borrower or Guarantor as against any issuer of a Letter of Credit Accommodation, each Borrower and Guarantor assumes all

risks with respect to the acts or omissions of the drawer under or beneficiary of any Letter of Credit Accommodation and for such purposes the drawer or beneficiary shall be deemed such Borrower's agent. Each Borrower and Guarantor assumes all risks for, and agrees to pay, all foreign, Federal, State and local taxes, duties and levies relating to any goods subject to any Letter of Credit Accommodations or any documents, drafts or acceptances thereunder. Each Borrower and Guarantor hereby releases and holds Administrative Agent and Lenders harmless from and against any acts, waivers, errors, delays or omissions, whether caused by any Borrower, Guarantor, by any issuer or correspondent or otherwise with respect to or relating to any Letter of Credit Accommodation, except to the extent resulting from the gross negligence or willful misconduct of Administrative Agent or any Lender as determined pursuant to a final, non-appealable order of a court of competent jurisdiction. The provisions of this Section 2.4(f) shall survive the payment of Obligations and the termination of this Agreement.

(g) In connection with Inventory purchased pursuant to Letter of Credit Accommodations, Borrowers and Guarantors shall, at Administrative Agent's request, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or others receiving or holding cash, checks, Inventory, documents or instruments in which Administrative Agent holds a security interest to, at such time as Administrative Agent may request, deliver them to Administrative Agent and/or subject to Administrative Agent's order, and if they shall come into such Borrower's or Guarantor's possession, to deliver them, upon Administrative Agent's request, to Administrative Agent in their original form, provided, that, Administrative Agent shall not exercise its rights under this clause (g) to have such persons deliver any cash, checks or Inventory to Administrative Agent unless a Default or Event of Default shall exist or have occurred and be continuing. Borrowers and Guarantors shall also, at Administrative Agent's request, designate Administrative Agent as the consignee on all bills of lading and other negotiable and non-negotiable documents.

(h) Each Borrower and Guarantor hereby irrevocably authorizes and directs any issuer of a Letter of Credit Accommodation to name such Borrower or Guarantor as the account

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party therein and to deliver to Administrative Agent all instruments, documents and other writings and property received by issuer pursuant to the Letter of Credit Accommodations and to accept and rely upon Administrative Agent's instructions and agreements with respect to all matters arising in connection with the Letter of Credit Accommodations or the applications therefor. Nothing contained herein shall be deemed or construed to grant any Borrower or Guarantor any right or authority to pledge the credit of Administrative Agent or any Lender in any manner. Administrative Agent and Lenders shall have no liability of any kind with respect to any Letter of Credit Accommodation provided by an issuer other than Administrative Agent or any Lender unless Administrative Agent has duly executed and delivered to such issuer the application or a guarantee or indemnification in writing with respect to such Letter of Credit Accommodation. Borrowers and Guarantors shall be bound by any reasonable interpretation made in good faith by Administrative Agent, or any other issuer or correspondent under or in connection with any Letter of Credit Accommodation or any documents, drafts or acceptances thereunder, notwithstanding that such interpretation may be inconsistent with any instructions of any Borrower or Guarantor, except as to any issuer without limiting the rights of any Borrower or Guarantor as against any issuer to the extent provided in clause (m) below.

(i) So long as no Event of Default exists or has occurred and is continuing, a Borrower may (i) approve or resolve any questions of non-compliance of

documents, (ii) give any instructions as to acceptance or rejection of any documents or goods, (iii) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders, and (iv) with Administrative Agent's consent, grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents, and agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Collateral.

(j) At any time an Event of Default exists or has occurred and is continuing, Administrative Agent shall have the right and authority to, and Borrowers shall not, without the prior written consent of Administrative Agent, (i) approve or resolve any questions of non-compliance of documents, (ii) give any instructions as to acceptance or rejection of any documents or goods, (iii) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders, (iv) grant any extensions of the maturity of, time of payments for, or time of presentation of, any drafts, acceptances, or documents, and (v) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Collateral. Administrative Agent may take such actions either in its own name or in any Borrower's name.

(k) Any rights, remedies, duties or obligations granted or undertaken by any Borrower or Guarantor to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement in favor of any issuer or correspondent relating to any Letter of Credit Accommodation, shall be deemed to have been granted or undertaken by such Borrower or Guarantor to Administrative Agent for the ratable benefit of Lenders. Any duties or obligations undertaken by Administrative Agent to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement by Administrative

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Agent in favor of any issuer or correspondent to the extent relating to any Letter of Credit Accommodation, shall be deemed to have been undertaken by Borrowers and Guarantors to Administrative Agent for the ratable benefit of Lenders and to apply in all respects to Borrowers and Guarantors.

(l) Immediately upon the issuance or amendment of any Letter of Credit Accommodation, each Tranche A Lender shall be deemed to have irrevocably and unconditionally purchased and received, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Pro Rata Share of the liability with respect to such Letter of Credit Accommodation (including, without limitation, all Obligations with respect thereto).

(m) Each Borrower is irrevocably and unconditionally obligated, without presentment, demand or protest, to pay to Administrative Agent any amounts paid by an issuer of a Letter of Credit Accommodation with respect to such Letter of Credit Accommodation (whether through the borrowing of Loans in accordance with Section 2.4(a) or otherwise); provided, that, nothing contained herein shall be construed to limit or waive any right of any Borrower to assert against an issuer of a Letter of Credit Accommodation any claim for direct damages suffered by such Borrower to the extent caused by the gross negligence or willful misconduct of the issuer in determining whether a request presented under any Letter of Credit Accommodation issued by it complied with the terms of such Letter of Credit Accommodation. In the event that any Borrower fails to pay Administrative Agent on the date of any payment under a Letter of

Credit Accommodation in an amount equal to the amount of such payment, Administrative Agent (to the extent it has actual notice thereof) shall promptly notify each Tranche A Lender of the unreimbursed amount of such payment and each Tranche A Lender agrees, upon one (1) Business Day's notice, to fund to Administrative Agent the purchase of its participation in such Letter of Credit Accommodation in an amount equal to its Pro Rata Share of the unpaid amount. The obligation of each Tranche A Lender to deliver to Administrative Agent an amount equal to its respective participation pursuant to the foregoing sentence is absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuance of any Event of Default, the failure to satisfy any other condition set forth in Section 4 or any other event or circumstance. If such amount is not made available by a Tranche A Lender when due, Administrative Agent shall be entitled to recover such amount on demand from such Tranche A Lender with interest thereon, for each day from the date such payment was due until the date such amount is paid to Administrative Agent at the Federal Funds Rate for each day during such period (as published by the Federal Reserve Bank of New York or at Administrative Agent's option based on the arithmetic mean determined by Administrative Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that day by each of the three leading brokers of Federal funds transactions in New York City selected by Administrative Agent) and if such amounts are not paid within three (3) days of Administrative Agent's demand, at the highest Interest Rate provided for in Section 3.1 hereof applicable to Base Rate Loans.

#### 10.5 Prepayments.

(a) Borrowers may prepay without penalty or premium the principal of any Revolving Loan or Swing Line Loan, in whole or in part; provided, that, (i) all such optional

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prepayments of Revolving Loans shall be applied first to the Tranche A Revolving Loans and second to the Tranche A-1 Revolving Loans and (ii) any prepayment of a SOFR Rate Loan shall be accompanied by all accrued interest on the amount paid, together with any additional amounts required pursuant to Section 3.3(d) hereof.

(b) [Reserved].

(c) In the event that (i) the aggregate amount of the Loans (including Swing Line Loans) and the Letter of Credit Accommodations outstanding exceed the Maximum Credit, (ii) the aggregate amount of the Loans (including Swing Line Loans) and Letter of Credit Accommodations outstanding exceed the Total Borrowing Base, (iii) the aggregate amount of the Tranche A Loans, the Swing Line Loans and the Letter of Credit Accommodations outstanding exceed the lesser of the Tranche A Maximum Credit or the Tranche A Borrowing Base, (iv) the aggregate amount of the Tranche A-1 Revolving Loans outstanding exceed the lesser of the Tranche A-1 Maximum Credit or the Tranche A-1 Borrowing Base, or (v) the aggregate amount of the Loans (including Swing Line Loans) and the Letter of Credit Accommodations outstanding exceed the amount permitted under the Senior Note Indenture or exceed the amount that gives rise to the obligation of Parent or any of its Subsidiaries to grant any lien on its assets to secure the Senior Notes, such event shall not limit, waive or otherwise affect any rights of Administrative Agent or Lenders in such circumstances or on any future occasions and Borrowers shall, upon demand by Administrative Agent at its option or in the case of clauses (i), (ii) and (v) above, at the direction of the Required Lenders or in the case of clause (iii) above, at the direction of the Required Tranche A Lenders or in the case of

clause (iv) above, at the direction of the Required Tranche A-1 Lenders, which may be made at any time or from time to time, immediately repay to Administrative Agent the entire amount of any such excess(es) for which payment is demanded (and including breakage or similar costs, if any).

(d) Borrowers shall prepay the Obligations as required under Sections 9.5(a), 9.7(b)(ii), (iii), (v), (vi), (vii), (xi), (xii) and (xiii) and 9.9(f)(ix).

(e) Except as set forth in Section 2.3(c) hereof, in Section 2.5(c) hereof or in any other provision of this Agreement to the contrary, all mandatory prepayments required to be made hereunder shall be applied first, to the Tranche A Revolving Loans then due, and second, to the Tranche A-1 Revolving Loans.

#### 10.6 Increase in Maximum Credit.

(a) Lead Borrower may, at any time, deliver a written request to Administrative Agent to increase the Tranche A Maximum Credit. Any such written request shall specify the amount of the increase in the Tranche A Maximum Credit that Borrowers are requesting, provided, that, (i) in no event shall the aggregate amount of any such increase cause the Maximum Credit to exceed \$1,400,000,000, (ii) any such request shall be for an increase of not less than \$50,000,000, (iii) any such request shall be irrevocable, (iv) in no event shall there be more than four (4) such increases and (v) as of the date of any such increase, and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing.

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(b) Upon the receipt by Administrative Agent of any such written request, Administrative Agent shall notify each of the Tranche A Lenders of such request and each Tranche A Lender shall have the option (but not the obligation) to increase the amount of its Tranche A Commitment by an amount up to its Pro Rata Share of the amount of the increase thereof requested by Lead Borrower as set forth in the notice from Administrative Agent to such Tranche A Lender. Each Tranche A Lender shall notify Administrative Agent within fifteen (15) days after the receipt of such notice from Administrative Agent whether it is willing to so increase its Tranche A Commitment, and if so, the amount of such increase; provided, that, (i) the minimum increase in the Tranche A Commitments of each such Tranche A Lender providing the additional Tranche A Commitments shall equal or exceed \$1,000,000, and (ii) no Tranche A Lender shall be obligated to provide such increase in its Tranche A Commitment and the determination to increase the Tranche A Commitment of a Tranche A Lender shall be within the sole and absolute discretion of such Tranche A Lender. If the aggregate amount of the increases in the Tranche A Commitments received from the Tranche A Lenders does not equal or exceed the amount of the increase in the Tranche A Maximum Credit requested by Lead Borrower, Administrative Agent may seek additional increases from Lenders or Tranche A Commitments from such Eligible Transferees as it may determine, after consultation with Lead Borrower. In the event Tranche A Lenders (or Tranche A Lenders and any such Eligible Transferees, as the case may be) have committed in writing to provide increases in their Tranche A Commitments or new Tranche A Commitments in an aggregate amount in excess of the increase in the Tranche A Maximum Credit requested by Borrowers or permitted hereunder, Administrative Agent shall then have the right to allocate such commitments, first to Tranche A Lenders and then to Eligible Transferees, in such amounts and manner as Administrative Agent may determine, after consultation with Lead Borrower. If the aggregate amount of the increase in Tranche A Commitments and new Tranche A Commitments, as the case may be, do not equal or exceed the amount of the increase

in the Tranche A Maximum Credit requested by Lead Borrower, then Lead Borrower in its sole discretion may determine to not proceed with the proposed increase in the Tranche A Maximum Credit; provided, that, Lead Borrower notifies Administrative Agent of such decision not to proceed within three (3) days after Administrative Agent notifies Lead Borrower of the aggregate amount of the increase in Tranche A Commitments and new Tranche A Commitments that the Tranche A Lenders and/or Eligible Assignees have committed to.

(c) The Tranche A Maximum Credit shall be increased by the amount of the increase in the applicable Tranche A Commitments from Tranche A Lenders or new Tranche A Commitments from Eligible Transferees, in each case, selected in accordance with Section 2.6(b) above, for which Administrative Agent has received Assignment and Acceptances thirty (30) days after the date of the request by Lead Borrower for the increase or such earlier date as Administrative Agent and Lead Borrower may agree (but subject to the satisfaction of the conditions set forth below), whether or not the aggregate amount of the increase in Tranche A Commitments and new Tranche A Commitments, as the case may be, exceed the amount of the increase in the Tranche A Maximum Credit requested by Lead Borrower in accordance with the terms hereof, effective on the date that each of the following conditions have been satisfied:

(i) Administrative Agent shall have received from each Tranche A Lender or Eligible Transferee that is providing an additional Tranche A Commitment as part of the increase in the Tranche A Maximum Credit, an Assignment and Acceptance duly executed by

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such Lender or Eligible Transferee and each Borrower, provided, that, the aggregate Tranche A Commitments set forth in any such Assignment and Acceptance shall be not less than \$1,000,000;

(ii) the conditions precedent to the making of Loans set forth in Section 4.2 shall be satisfied as of the date of the increase in the Tranche A Maximum Credit, both before and after giving effect to such increase;

(iii) such increase in the Tranche A Maximum Credit, on the date of the effectiveness thereof, shall not violate any applicable law (including, without limitation, FIRREA), regulation or order or decree of any court or other Governmental Authority and shall not be enjoined, temporarily, preliminarily or permanently; and

(iv) there shall have been paid to each Tranche A Lender and Eligible Transferee providing an additional Commitment in connection with such increase in the Tranche A Maximum Credit all fees and expenses due and payable to such Person on or before the effectiveness of such increase.

(d) As of the effective date of any such increase in the Tranche A Maximum Credit, each reference to the term Tranche A Commitments and Tranche A Maximum Credit herein, as applicable, and in any of the other Financing Agreements shall be deemed amended to mean the amount of the Tranche A Commitments and Tranche A Maximum Credit specified in the most recent written notice from Administrative Agent to Lead Borrower of the increase in the Tranche A Commitments and Tranche A Maximum Credit, as applicable.

(e) Effective on the date of each increase in the Tranche A Maximum Credit pursuant to this Section 2.6, as applicable, each reference in this Agreement to an amount of Excess Availability shall, automatically and without any further action, be

deemed to be increased so that the ratio of each amount of Excess Availability to the amount of the Maximum Credit after such increase in the Maximum Credit remains the same as the ratio of such the amount of Excess Availability to the amount of the Maximum Credit prior to such increase in the Maximum Credit.

(f) In the event that, as a result of an increase in the Tranche A Maximum Credit, the Pro Rata Shares of any Lender or Lenders with respect to any SOFR Rate Loans are decreased (other than on the last date of the Interest Period(s) applicable thereto), Borrowers shall pay such Lenders, on the effective date of such increase in the Tranche A Maximum Credit, break funding compensation with respect to such decrease in the amount that would be due pursuant to Section 3.3(d) hereof had the Borrowers prepaid such Lenders' interests in such SOFR Rate Loans by an amount equal to the decrease.

(g) In no event shall the fees, interest rate and other compensation offered or paid in respect of additional Tranche A Commitments or increase in Tranche A Commitments be higher than the amounts paid and payable to the then existing Tranche A Lenders in respect of their Tranche A Commitments, unless the fees, interest rate and other compensation payable to the then existing Tranche A Lenders are increased to the same as those paid in connection with

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the such new or additional Tranche A Commitments, except for the initial commitment fee payable in respect of such new or additional Tranche A Commitment of a Tranche A Lender.

**10.7 Commitments.** The aggregate amount of each Tranche A Lender's Pro Rata Share of the Tranche A Revolving Loans, Swing Line Loans and Letter of Credit Accommodations shall not exceed the amount of such Lender's Tranche A Commitment, as the same may from time to time be amended in accordance with the provisions hereof. The aggregate amount of each Tranche A-1 Lender's Pro Rata Share of the Tranche A-1 Revolving Loans shall not exceed the amount of such Lender's Tranche A-1 Commitment, as the same may from time to time be amended in accordance with the provisions hereof.

**10.8 Joint and Several Liability.** All Borrowers shall be jointly and severally liable for all amounts due to Administrative Agent and Lenders under this Agreement and the other Financing Agreements, regardless of which Borrower actually receives the Loans or Letter of Credit Accommodations hereunder or the amount of such Loans received or the manner in which Administrative Agent or any Lender accounts for such Loans, Letter of Credit Accommodations or other extensions of credit on its books and records. All references herein or in any of the other Financing Agreements to any of the obligation of Borrowers to make any payment hereunder or thereunder shall constitute joint and several obligations of Borrowers. The Obligations with respect to Loans made to a Borrower, and the Obligations arising as a result of the joint and several liability of a Borrower hereunder, with respect to Loans made to the other Borrowers, shall be separate and distinct obligations, but all such other Obligations shall be primary obligations of all Borrowers. The Obligations arising as a result of the joint and several liability of a Borrower hereunder with respect to Loans, Letter of Credit Accommodations or other extensions of credit made to the other Borrowers shall, to the fullest extent permitted by law, be unconditional irrespective of (a) the validity or enforceability, avoidance or subordination of the Obligations of the other Borrowers or of any promissory note or other document evidencing all or any part of the Obligations of the other Borrowers, (b) the absence of any attempt to collect the Obligations from the other Borrowers, any Guarantor or any other security therefor, or the absence of any other action to enforce the same, (c) the waiver, consent, extension, forbearance or granting

of any indulgence by Administrative Agent or any Lender with respect to any provisions of any instrument evidencing the Obligations of the other Borrowers, or any part thereof, or any other agreement now or hereafter executed by the other Borrowers and delivered to Administrative Agent or any Lender, (d) the failure by Administrative Agent or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights and maintain its security or collateral for the Obligations of the other Borrowers, (e) the election of Administrative Agent and Lenders in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, (f) the disallowance of all or any portion of the claim(s) of Administrative Agent or any Lender for the repayment of the Obligations of the other Borrowers under Section 502 of the Bankruptcy Code, or (g) any other circumstances which might constitute a legal or equitable discharge or defense of a Guarantor or of the other Borrowers other than to the extent of the gross negligence or wilful misconduct of Administrative Agent or a Lender as determined pursuant to a final non-appealable order of a court of competent jurisdiction. With respect to the Obligations arising as a result of the joint and several liability of a Borrower hereunder with respect to Loans, Letter of Credit Accommodations or other extensions of credit made to the other Borrowers hereunder, each

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Borrower waives, until the Obligations shall have been paid in full and this Agreement shall have been terminated, any right to enforce any right of subrogation or any remedy which Administrative Agent or any Lender now has or may hereafter have against any Borrower or Guarantor and any benefit of, and any right to participate in, any security or collateral given to Administrative Agent or any Lender. Upon any Event of Default, and for so long as such Event of Default is continuing, Administrative Agent may proceed directly and at once, without notice, against any Borrower to collect and recover the full amount, or any portion of the Obligations, without first proceeding against the other Borrowers or any other Person, or against any security or collateral for the Obligations. Each Borrower consents and agrees that Administrative Agent and Lenders shall be under no obligation to marshal any assets in favor of Borrower(s) or against or in payment of any or all of the Obligations. To the extent of any guarantee or similar liability with respect to Swap Obligations, 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 Borrower or Guarantor to honor all of its obligations under any such guarantee or similar liability in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable for the maximum amount of such liability that can be hereby incurred without rendering its obligations as it relates to such other Borrower or Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Each Qualified ECP Guarantor intends that this provision constitute a “keepwell, support, or other agreement” for the benefit of each other Borrower or Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act. The term “Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Borrower or Guarantor that has total assets exceeding \$10,000,000 at the time such Swap Obligation is incurred or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder. The term “Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute. The term “Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

#### 10.9 Sustainability Adjustments.

(a) After the Amendment No. 6 Effective Date, the Borrowers, in consultation with the Sustainability Structuring Agent, shall be entitled to (i) identify specified Environmental, Social and Governance (“ESG”) related Key Performance Indicators (“KPIs”) and establish associated annual Sustainability Performance Targets (“SPTs”) with respect to the ESG strategy and disclosure of the Borrowers and its Subsidiaries and/or (ii) identify external ESG ratings (“ESG Ratings”) and establish associated annual SPTs. Any such KPIs and/or ESG Ratings and associated SPTs are to be mutually agreed between the Borrowers and the Sustainability Structuring Agent.

(b) Notwithstanding anything in Section 11.3 to the contrary, the Borrowers, the Sustainability Structuring Agent, and the Required Lenders may amend this Agreement (such amendment, the “ESG Amendment”) solely for the purpose of incorporating the KPIs and/or

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ESG Ratings, associated SPTs, and other related provisions (the “ESG Pricing Provisions”) into this Agreement.

(c) In the event that any such ESG Amendment does not obtain requisite consent of the Required Lenders, an alternative ESG Amendment may be effectuated with the consent of the Required Lenders, the Borrowers, the Sustainability Structuring Agent, and the Administrative Agent.

(d) Upon the effectiveness of any such ESG Amendment, based on the Borrowers’ performance against the KPIs and/or ESG Ratings and associated SPTs, certain adjustments (an increase, a decrease, or no adjustment) to the unused line fee set forth in Section 3.2(a) of this Agreement and the Applicable Margin will be made; provided, that, (i) the amount of any such adjustments made pursuant to an ESG Amendment shall not exceed (A) in the case of the unused line fee set forth in Section 3.2(a) of this Agreement, an increase and/or decrease of 1.00 basis point and (B) in the case of the Applicable Margin, an increase and/or decrease of 5.00 basis points, (ii) in no event shall the unused line fee set forth in Section 3.2(a) of this Agreement or the Applicable Margin be less than 0% and (iii) for the avoidance of doubt, such pricing adjustments shall not be cumulative year-over-year and each applicable adjustment shall only apply until the date on which the next adjustment is due to take place.

(e) The pricing adjustments will require, among other things, annual reporting in a manner that is aligned with the Sustainability Linked Loan Principles in effect at the time of the ESG Amendment and is to be mutually agreed between the Borrowers, the Sustainability Structuring Agent, and the Administrative Agent (each acting reasonably). If KPIs are utilized, any proposed ESG Amendment shall also identify a sustainability assurance provider, provided, that, any such sustainability assurance provider shall be a qualified external reviewer, independent of the Borrowers and their Subsidiaries, with relevant expertise, such as an auditor, environmental consultant and/or independent ratings agency of recognized national standing.

(f) Following the effectiveness of the ESG Amendment, (i) any modification to the ESG Pricing Provisions which has the effect of reducing the unused line fee set forth in Section 3.2(a) of this Agreement and the Applicable Margin to a level not otherwise permitted by this Section 2.9 shall be subject to the consent of all Lenders and (ii) any other modification to the ESG Pricing Provisions (other than, for the avoidance of doubt, as provided for in the immediately preceding clause (i)) shall be subject only to the consent of the Required Lenders.

(g) In connection with any proposed ESG Amendment, the Sustainability Structuring Agent may (i) assist the Borrowers in selecting the KPIs and/or ESG Ratings and setting the associated SPTs, (ii) determine the ESG Pricing Provisions in connection with the ESG Amendment, and (iii) assist the Borrowers in preparing informational materials focused on ESG to be used in connection with the ESG Amendment, in each case based upon the information provided by the Borrowers with respect to the applicable KPIs and/or ESG Ratings selected in accordance with this Section 2.9, provided, that, the Sustainability Structuring Agent (A) shall have no duty to ascertain, inquire into, or otherwise independently verify any such information and (B) shall have no responsibility for (and shall not be liable for) the completeness or accuracy of any such information.

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(h) Neither the Administrative Agent nor Sustainability Structuring Agent (a) makes any assurances whether this Agreement meets any criteria or expectations of the Borrowers or any lender with regard to environmental or social impact and sustainability performance, or whether the facility including the characteristics of the relevant KPI metrics (including any environmental, social and sustainability criteria or any computation methodology) meet any industry standards for sustainability-linked credit facilities, or (b) has any responsibility for or liability in respect of reviewing, auditing or otherwise evaluating any calculation by the Borrowers of the KPI metrics or any margin or fee adjustment (or any of the data or computations that are part of or related to any such calculation) set out in any pricing certificate (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry, when implementing any pricing adjustment).

(i) Each Lender hereby acknowledges that neither the Sustainability Structuring Agent, any Documentation Agent, any Syndication Agent nor any other Lender (or its affiliate) designated as any "Agent" or "Arranger" on the cover page hereof (other than the Administrative Agent) has any liability hereunder other than in its capacity as a Lender.

## **SECTION 11. INTEREST AND FEES**

### **11.1 Interest.**

(a) Borrowers shall pay to Administrative Agent, for the benefit of Lenders, interest on the outstanding principal amount of the Loans at the Interest Rate. All interest accruing hereunder on and after the date of any Event of Default or termination hereof shall be payable on demand.

(b) Each Borrower may from time to time request Term SOFR Rate Loans or Daily Simple SOFR Loans, or may request that Base Rate Loans be converted to Term SOFR Rate Loans or Daily Simple SOFR Loans, or that any existing Term SOFR Rate Loans continue for an additional Interest Period, in each case, subject to the limits set forth below. Such request from a Borrower shall specify the amount of the Term SOFR Rate Loans or Daily Simple SOFR Loans requested, or the amount of the Base Rate Loans to be converted to Term SOFR Rate Loans or Daily Simple SOFR Loans, as applicable, or the amount of the Term SOFR Rate Loans to be continued (subject to the limits set forth below) and the Interest Period to be applicable to such Term SOFR Rate Loans. Subject to the terms and conditions contained herein, three (3) U.S. Government Securities Business Days after (or, in the case of requests for borrowings of or conversions to Daily Simple SOFR Loans, five (5) U.S. Government Securities Business Days after) receipt by Administrative Agent of such a request from a Borrower, such SOFR Rate Loans shall be made or Base Rate Loans shall be converted to SOFR

Rate Loans or such Term SOFR Rate Loans shall continue, as the case may be, provided, that, (i) no Default or Event of Default shall exist or have occurred and be continuing, (ii) no party hereto shall have sent any notice of termination of this Agreement, such Borrower shall have complied with such customary procedures as are established by Administrative Agent and specified by Administrative Agent to Lead Borrower from time to time for requests by Borrowers for SOFR Rate Loans, (iii) no more than fifteen (15) Interest Periods may be in effect at any one time, (iv) the amount of any Term SOFR Rate Loan shall be not less than \$1,000,000 and the aggregate amount of the Term SOFR Rate Loans outstanding at any time must be in an amount not less

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than \$5,000,000, (v) Administrative Agent and each Lender shall have determined that the Interest Period, Adjusted Term SOFR or Adjusted Daily Simple SOFR is available to Administrative Agent and such Lender and can be readily determined as of the date of the request for such SOFR Rate Loan by such Borrower, and (vi) notwithstanding anything to the contrary contained in this Agreement or any other Financing Agreement, the outstanding principal amount of all Daily Simple SOFR Loans shall not exceed \$35,000,000 at any time. Any request by or on behalf of a Borrower for SOFR Rate Loans or to convert Base Rate Loans to SOFR Rate Loans or to continue any existing Term SOFR Rate Loans shall be irrevocable. Notwithstanding anything to the contrary contained herein, neither the Administrative Agent, nor any Lender, nor any of their Participants, is required actually to match fund any Obligation as to which interest accrues at Adjusted Daily Simple SOFR, SOFR, Adjusted Term SOFR or the Term SOFR Reference Rate.

(c) Any Term SOFR Rate Loans shall automatically convert to Base Rate Loans upon the last day of the applicable Interest Period, unless Administrative Agent has received and approved a request to continue such Term SOFR Rate Loan at least three (3) U.S. Government Securities Business Days prior to such last day in accordance with the terms hereof. Any SOFR Rate Loans shall, at Administrative Agent's option, upon notice by Administrative Agent to Lead Borrower, be subsequently converted to Base Rate Loans in the event that this Agreement shall terminate or not be renewed. Borrowers shall pay to Administrative Agent, for the benefit of Lenders, upon demand by Administrative Agent (or Administrative Agent may, at its option, charge any loan account of any Borrower) any amounts required to compensate any Lender or Participant for any loss (including loss of anticipated profits), cost or expense incurred by such person, as a result of the conversion of SOFR Rate Loans to Base Rate Loans pursuant to any of the foregoing.

(d) Interest shall be payable by Borrowers to Administrative Agent, for the account of Lenders, monthly in arrears not later than the first day of each calendar month (except, with respect to Term SOFR Rate Loans, not later than on the last day of the applicable Interest Period) and shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed. The interest rate on non-contingent Obligations (other than SOFR Rate Loans) shall increase or decrease by an amount equal to each increase or decrease in the Base Rate effective on the first day of the month after any change in such Base Rate is announced based on the Base Rate in effect on the last day of the month in which any such change occurs. In no event shall charges constituting interest payable by Borrowers to Administrative Agent and Lenders exceed the maximum amount or the rate permitted under any applicable law or regulation, and if any such part or provision of this Agreement is in contravention of any such law or regulation, such part or provision shall be deemed amended to conform thereto. In the event Adjusted Daily Simple SOFR is changed from time to time

hereafter, the rates of interest hereunder based upon Adjusted Daily Simple SOFR automatically and immediately shall be increased or decreased by an amount equal to such change in Adjusted Daily Simple SOFR.

(e) In connection with the use or administration of any Benchmark, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Financing Agreement, any amendments implementing such Conforming Changes will become effective without any further

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action or consent of any other party to this Agreement or any other Financing Agreement. The Administrative Agent will promptly notify the Lead Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of any Benchmark.

### 11.2 Fees.

(a) Borrowers shall pay to Administrative Agent, for the account of Tranche A Lenders and Tranche A-1 Lenders, an unused line fee calculated at one-quarter of one (0.25%) percent per annum multiplied by the difference between the Tranche A Maximum Credit plus the Tranche A-1 Maximum Credit and the average outstanding Revolving Loans and Letter of Credit Accommodations during the immediately preceding month (or part thereof) while this Agreement is in effect and for so long thereafter as any of the Obligations are outstanding, which fee shall be payable on the first day of each month in arrears. Swing Line Loans shall not be considered in the calculation of the unused line fee. Such unused line fee shall be calculated on the basis of a 360 day year and actual days elapsed.

(b) Borrowers agree to pay to Administrative Agent the other fees and amounts set forth in the Fee Letter in the amounts and at the times specified therein.

### 11.3 Changes in Laws and Increased Costs of Loans.

(a) Subject to the provisions set forth in Section 3.4, if after the Effective Date, either (i) any Change in Law is introduced, including, without limitation, with respect to reserve, special deposit, compulsory loan, insurance charge, liquidity or other similar requirements, applicable to Lender or any banking or financial institution from whom any Lender borrows funds or obtains credit necessary to fund the Loans hereunder (a "Funding Bank"), or (ii) a Funding Bank or any Lender complies with any future guideline or request from any central bank or other Governmental Authority or (iii) a Funding Bank or any Lender determines that the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof has or would have the effect described below or subjects any Lender to any Taxes on its loans, loan principal, letter of credit commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or a Funding Bank or any Lender complies with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, and in the case of any event set forth in this clause (iii), such adoption, change or compliance has or would have the direct or indirect effect of reducing the rate of return on any Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration the Funding Bank's or Lender's policies with respect to capital

adequacy) by an amount deemed by such Lender to be material, and the result of any of the foregoing events described in clauses (i), (ii) or (iii) is or results in an increase in the cost to any Lender of funding or maintaining the Loans, the Letter of Credit Accommodations or its Commitment, then Borrowers and Guarantors shall from time to time upon demand by Administrative Agent pay to Administrative Agent additional amounts sufficient to indemnify Lenders against such increased cost on an after-tax basis (after taking into account applicable

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deductions and credits in respect of the amount indemnified). A certificate as to the amount of such increased cost shall be submitted to Lead Borrower by Administrative Agent and shall be conclusive, absent manifest error.

(b) Subject to the provisions set forth in [Section 3.4](#), if prior to the first day of any Interest Period, (i) Administrative Agent shall have determined in good faith (which determination shall be conclusive and binding upon Borrowers and Guarantors) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining Adjusted Term SOFR for such Interest Period or Adjusted Daily Simple SOFR, (ii) Administrative Agent has received notice from the Required Lenders that Adjusted Term SOFR or Adjusted Daily Simple SOFR determined or to be determined for such Interest Period, as applicable, will not adequately and fairly reflect the cost to Lenders of making or maintaining SOFR Rate Loans during such Interest Period, or (iii) Dollar deposits in the principal amounts of the SOFR Rate Loans to which such Interest Period is to be applicable are not generally available in the applicable market, Administrative Agent shall give telecopy or telephonic notice thereof to Lead Borrower as soon as practicable thereafter, and will also give prompt written notice to Lead Borrower when such conditions no longer exist. If such notice is given (A) any SOFR Rate Loans requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (B) any Loans that were to have been converted on the first day of such Interest Period to or continued as SOFR Rate Loans shall be converted to or continued as Base Rate Loans and (C) each outstanding SOFR Rate Loan shall be converted, on the last day of the then-current Interest Period thereof, to Base Rate Loans. Until such notice has been withdrawn by Administrative Agent, no further SOFR Rate Loans shall be made or continued as such, nor shall any Borrower have the right to convert Base Rate Loans to SOFR Rate Loans.

(c) Notwithstanding any other provision herein (but subject to the provisions set forth in [Section 3.4](#)), if the adoption of or any Change in Law shall make it unlawful for Administrative Agent or any Lender to make or maintain SOFR Rate Loans as contemplated by this Agreement, (i) Administrative Agent or such Lender shall promptly give written notice of such circumstances to Lead Borrower (which notice shall be withdrawn whenever such circumstances no longer exist), (ii) the commitment of such Lender hereunder to make SOFR Rate Loans, continue SOFR Rate Loans as such and convert Base Rate Loans to SOFR Rate Loans shall forthwith be canceled and, until such time as it shall no longer be unlawful for such Lender to make or maintain SOFR Rate Loans, such Lender shall then have a commitment only to make a Base Rate Loan when a SOFR Rate Loan is requested and (iii) such Lender's Loans then outstanding as SOFR Rate Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Term SOFR Rate Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrowers and Guarantors shall pay to such Lender such amounts, if any, as may be required pursuant to [Section 3.3\(d\)](#) below.

(d) Borrowers and Guarantors shall indemnify Administrative Agent and each Lender and to hold Administrative Agent and each Lender harmless from any loss or expense which Administrative Agent or such Lender may sustain or incur as a consequence of (i) default by a Borrower in making a borrowing of, conversion into or extension of SOFR Rate Loans after

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such Borrower has given a notice requesting the same in accordance with the provisions of this Loan Agreement, (ii) default by any Borrower in making any prepayment of a SOFR Rate Loan after such Borrower has given a notice thereof in accordance with the provisions of this Agreement, and (iii) the making of a prepayment of SOFR Rate Loans on a day which is not the last day of an Interest Period with respect thereto. With respect to SOFR Rate Loans, such indemnification may include an amount equal to the excess, if any, of (A) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, converted or extended, for the period from the date of such prepayment or of such failure to borrow, convert or extend to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or extend, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such SOFR Rate Loans provided for herein over (B) the amount of interest (as determined by such Administrative Agent or such Lender) which would have accrued to Administrative Agent or such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the applicable market. This covenant shall survive the termination or non-renewal of this Loan Agreement and the payment of the Obligations.

(e) Borrowers and Guarantors shall be liable for any tax or penalties imposed on Administrative Agent or any Lender as a result of the financing arrangements provided for herein and each Borrower and Guarantor agrees to indemnify and hold Administrative Agent harmless with respect to the foregoing, and to repay to Administrative Agent, for the benefit of Lenders, on demand the amount thereof, and until paid by such Borrower or Guarantor such amount shall be added and deemed part of the Loans, provided, that, nothing contained herein shall be construed to require any Borrower or Guarantor to pay any income, franchise or similar taxes imposed upon Lenders and attributable to any amounts charged or paid hereunder to Lenders. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

(f) Each Lender requiring compensation pursuant to Section 3.3(a), 3.3(d) or 3.3(e) shall notify Borrowers and Administrative Agent in writing of any event or circumstance giving rise to such demand for compensation no later than ninety (90) days following the date upon which the Lender has actual knowledge of such event or circumstance, and Borrowers shall not be obligated to compensate a Lender for any such increased cost or reduction which is not covered in such notice within such ninety (90) day period. Any demand for compensation pursuant to this Section 3.3 shall be in writing and shall state the amount due, if any, under Section 3.3(d) or 3.3(e) and shall set forth in reasonable detail the calculations upon which such Lender determined such amount. Such written demand shall be conclusive, absent manifest error.

(g) If a Borrower is required to pay additional amounts to any Lender pursuant to Section 3.3(a) or Section 3.3(e) that increase the effective lending rate of such Lender with respect to its share of the Loans to greater than one-eighth (1/8%) percent in excess of the percentage of the effective lending rate of the other Lenders, then such Lender shall use reasonable efforts (consistent with legal and regulatory

restrictions) to change the jurisdiction of its lending office with respect to making SOFR Rate Loans so as to eliminate any such additional payment by Borrowers which may thereafter accrue, if such change in the judgment of such

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Lender is not otherwise disadvantageous to such Lender. In the event that any one or more Lenders, pursuant to Section 3.3(a) or Section 3.3(e) hereof, incur any increased costs or taxes (other than increased costs to the extent such increased costs are not a recurring cost) for which any such Lender demands compensation pursuant to Section 3.3(a) or Section 3.3(e) hereof which increases the effective lending rate of such Lender with respect to its share of the Loans to greater than one-eighth (1/8%) percent in excess of the percentage of the effective lending rate of the other Lenders and such Lender has not mitigated such costs within sixty (60) days after receipt by such Lender from Lead Borrower of a written notice that such Lender's effective lending rate has so exceeded the effective lending rate of the other Lenders, then and in any such event, Lead Borrower may substitute another financial institution which is an Eligible Transferee acceptable to Administrative Agent for such Lender to assume the Commitment of such Lender and to purchase the Loans of such Lender hereunder, without recourse to or warranty by, or expense to, such Lender for a purchase price equal to the outstanding principal amount of the Loans owing to such Lender plus any accrued but unpaid interest on such Loans and accrued but unpaid fees and other amounts in respect of such Lender's Commitment and share of the Loans (other than any early termination fee). Upon such purchase such Lender shall no longer be a party hereto or have any rights or benefits hereunder (except for rights or benefits that such Lender would retain hereunder and under the other Financing Agreements upon payment in full of all of the Obligations other than as to any early termination fee) and the replacement Lender shall succeed to the rights and benefits, and shall assume the obligations, of such Lender hereunder and thereunder. In no event may Lead Borrower replace a Lender that is also Administrative Agent or an issuer of a Letter of Credit Accommodation.

(h) For purposes of this Section 3.3 and any other applicable provision of this Agreement, the Dodd-Frank Wall Street Reform and Consumer Protection, the Basel Committee on Banking Supervision (or any successor or similar authority), the Bank for International Settlements and all rules, regulations, orders, requests, guidelines or directives in connection therewith are deemed to have been enacted and become effective after the date of this Agreement.

#### 11.4 Benchmark Replacement Setting.

(a) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Financing Agreement, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Lead Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Lead Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from the Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 3.4 will occur prior to the applicable Benchmark Transition Start Date.

(b) **Benchmark Replacement Conforming Changes.** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time

and, notwithstanding anything to the contrary herein or in any other Financing Agreement, any amendments

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implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Financing Agreement.

(c) **Notices; Standards for Decisions and Determinations.** The Administrative Agent will promptly notify the Lead Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Lead Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.4(d) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.4, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Financing Agreement, except, in each case, as expressly required pursuant to this Section 3.4.

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

(e) **Benchmark Unavailability Period.** Upon Lead Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (1) the Lead Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Lead Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans, and (2) any outstanding affected SOFR Rate Loans will be deemed to have been converted to Base Rate Loans (A) with respect to any Daily Simple SOFR Loans, immediately and (B) with respect to any Term SOFR Rate Loans, at the end of the applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate

based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

## **SECTION 12. CONDITIONS PRECEDENT**

### **12.1 Conditions Precedent to Initial Loans and Letter of Credit Accommodations.**

Each of the following is a condition precedent to Administrative Agent and Lenders making the initial Loans and providing the initial Letter of Credit Accommodations hereunder:

(a) each of the Nash-Finch Merger Documents shall be reasonably satisfactory to the Arrangers in all material respects (and the Arrangers acknowledge that the Nash-Finch Merger Documents provided to them as of July 21, 2013 are acceptable to them), and contemporaneously with the closing of the Credit Facility on the Effective Date, the Nash-Finch Merger shall be consummated in all material respects in accordance with the terms of the Nash-Finch Merger Documents without any material amendment or waiver thereof which is materially adverse to the Lenders except as consented to by Arrangers (it being understood that any change to the definitions of "Nash-Finch Material Adverse Effect", "Spartan Material Adverse Effect", or "Material Adverse Effect" contained in the Nash-Finch Merger Agreement, any waiver of the conditions precedent set forth in the Nash-Finch Merger Agreement regarding the absence of a "Nash-Finch Material Adverse Effect", "Spartan Material Adverse Effect", or "Material Adverse Effect", any change in the representations in the Nash-Finch Merger Agreement relating to a "Nash-Finch Material Adverse Effect", "Spartan Material Adverse Effect", or "Material Adverse Effect" or any approval, waiver or consent to any actions taken or failure to take action by Parent as provided for in Section 6.11 of the Nash-Finch Merger Agreement by Parent without the consent of Arrangers, shall be deemed to be material and adverse to the interests of the Lenders), and otherwise in compliance with material applicable law and regulatory approvals where the failure to comply would reasonably be expected to be materially adverse to the Administrative Agent and Lenders, and Administrative Agent shall have received evidence of the consummation of the Nash-Finch Merger;

(b) Excess Availability, as of the Effective Date, shall be not less than \$300,000,000 after giving effect to the initial Loans made or to be made and Letter of Credit Accommodations issued or to be issued in connection with the initial transactions hereunder and after provision for payment of all fees and expenses of the initial transactions hereunder (which amount may be reduced by up to \$50,000,000 solely to the extent of the aggregate amount of the availability based on any of the parcels of Real Property listed on Schedule 1.52 hereto that would have been included in the Tranche A Real Estate Availability but for the failure of such parcel to satisfy the requirements for Eligible Real Property as of the Effective Date);

(c) receipt by Arrangers of: (i) any updates or modifications to the projected financial statements of Parent and its Subsidiaries previously received by Arrangers or to any of the assumptions with respect thereto, (ii) copies of interim unaudited financial statements for each quarter and month since the last audited financial statements of Borrowers and Guarantors and (iii) third party appraisals, field examinations and environmental audits in accordance with Administrative Agent's customary procedures and in a form and scope substantially consistent with those previously delivered in connection with the Existing Spartan Credit Agreement and the Existing Nash-Finch Credit Agreement;

(d) execution and delivery of all Financing Agreements by the parties thereto, subject to clause (e) below, except, that, with respect to the delivery of Collateral Access Agreements for leased or third party locations, the failure to deliver such agreements shall not be a condition of making the initial Loans, provided, that, Borrowers shall have used commercially reasonable efforts to obtain such agreements prior to the Effective Date and to the extent not delivered prior to the Effective Date shall use commercially reasonable efforts to obtain such agreements thereafter (and to the extent that Administrative Agent has not received reasonably acceptable Collateral Access Agreements for a leased or third party location, it may establish a Reserve in respect of amounts payable under the applicable lease or other agreement pursuant to the terms of this Agreement), and including, without limitation, receipt of the following, each in form and substance satisfactory to Administrative Agent: (i) subject to clause (e) below, Deposit Account Control Agreements by and among Administrative Agent, each Borrower and each bank where such Borrower has a deposit account other than banks where such Borrower maintains a Store Account for which no Deposit Account Control Agreement is required pursuant to Section 6.3 hereof, in each case, duly authorized, executed and delivered by such bank and Borrower, (ii) originals of the shares of the stock certificates representing all of the issued and outstanding shares of the Capital Stock of each Borrower and Guarantor (other than Parent) and owned by any Borrower or Guarantor, in each case together with stock powers duly executed in blank with respect thereto, (iii) lien (including tax lien) and judgment search results for the jurisdiction of organization of each Borrower and Guarantor, the jurisdiction of the chief executive office of each Borrower and Guarantor and all jurisdictions in which assets of Borrowers and Guarantors are located, (iv) evidence of insurance and loss payee endorsements required hereunder and under the other Financing Agreements and certificates of insurance policies and/or endorsements naming Administrative Agent as loss payee, (v) such opinion letters of counsel to Borrowers and Guarantors with respect to the Financing Agreements and such other matters as Administrative Agent may reasonably request, limited to one (1) such outside counsel opinion for each applicable jurisdiction (it being agreed that one (1) counsel may opine on multiple jurisdictions, as applicable), and (vi) records of any required corporate or limited liability company action and proceedings of Borrowers and Guarantors approving an authorizing the execution, delivery and performance of this Agreement, the other Financing Agreements and the transactions contemplated hereby therewith, such documents where requested by Administrative Agent or its counsel to be certified by appropriate officers or a Governmental Authority, if applicable (and including a copy of the articles or certificate of incorporation or comparable organizational documents of each Borrower and Guarantor certified by the Secretary of State (or equivalent Governmental Authority) which shall set forth the same complete corporate or limited liability company name of such Borrower or Guarantor as is set forth herein;

(e) Administrative Agent, for the benefit of itself and the other Secured Parties, shall hold perfected, first priority (subject to the permitted liens set forth in Sections 9.8(b), 9.8(c), 9.8(d), 9.8(e), 9.8(f), 9.8(g), 9.8(h), 9.8(i), 9.8(j), 9.8(m) and 9.8(o) to the extent such liens may have priority under applicable law), security interests in and liens upon the Collateral, and Administrative Agent shall have received such evidence of the foregoing as it reasonably requires, except, that, to the extent any Collateral (including the creation or perfection of any security interest therein) is not or cannot be provided on the Effective Date after the use of commercially reasonable efforts by Parent to do so, without undue burden or expense, then the

perfection of any such lien, security interest and/or Collateral shall not constitute a condition precedent to the initial funding under this Agreement on the Effective Date but will be provided within ninety (90) days of the Effective Date or such longer period as Arrangers may reasonably agree (other than with respect to (i) the perfection of security interests in and liens on assets with respect to which a security interest may be perfected on the Effective Date solely by the filing of financing statements under the UCC or by the filing of a notice with the United States Patent and Trademark Office or the United States Copyright Office, and (ii) the perfection of security interests in and liens on the Capital Stock of Parent's direct or indirect domestic Subsidiaries (after giving effect to the Nash-Finch Merger) with respect to which a security interest may be perfected on the Effective Date by the delivery of a stock certificate);

(f) subject to clause (e) above, Administrative Agent, for the benefit of itself and the other Secured Parties, shall have received such documentation as is necessary to, upon filing, recording or registration, hold first priority (subject to the permitted liens set forth in Sections 9.8(b), 9.8(c), 9.8(d), 9.8(e), 9.8(f), 9.8(g), 9.8(h), 9.8(i), 9.8(j), 9.8(m) and 9.8(o) to the extent such liens may have priority under applicable law), perfected security interests in and liens upon the Collateral;

(g) Administrative Agent and Lenders shall have received all documentation and other information reasonably required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act, to the extent Administrative Agent has requested such information at least ten (10) Business Days prior to the Effective Date;

(h) no "Spartan Material Adverse Effect" (as defined in the Nash-Finch Merger Agreement as in effect on July 21, 2013 and as delivered to Arrangers) shall have occurred since March 30, 2013, or "Nash-Finch Material Adverse Effect" (as defined in the Nash-Finch Merger Agreement as in effect on July 21, 2013 and as delivered to Arrangers) shall have occurred since December 29, 2012;

(i) all costs, fees and expenses contemplated hereby due and payable on the Effective Date to Administrative Agent, Arrangers and Lenders in respect of the Credit Facility, to the extent invoiced at least two (2) Business Days prior to the Effective Date (or such later date as Parent may reasonably agree) shall, upon the initial borrowing under the Credit Facility, have been paid or charged to any loan account of Borrowers maintained by Administrative Agent and Borrowers shall have complied in all material respects with their obligations to assist in the syndication of the Credit Facility;

(j) Arrangers shall have received a solvency certificate from the Chief Financial Officer of Parent substantially in the form attached as Exhibit G hereof certifying that as of the Effective Date and after giving effect to the Credit Facility, the Nash-Finch Merger and the transactions reasonably contemplated hereby, Parent and its Subsidiaries, taken as a whole, shall be Solvent; and

(k) the Specified Representations and the Merger Agreement Representations shall be true and correct on the Effective Date.

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#### 12.2 Conditions Precedent to All Loans and Letter of Credit Accommodations.

Each of the following is a condition precedent to the making of any Loans and/or providing Letter of Credit Accommodations to Borrowers:

(a) all representations and warranties contained herein and in the other Financing Agreements (but, on the Effective Date and with respect to the making of the initial Loans only, with respect to only the Merger Agreement Representations and the

Specified Representations and subject to Section 4.1(e) shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) with the same effect as though such representations and warranties had been made on and as of the date of the making of each such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of such earlier date);

(b) no law, regulation, order, judgment or decree of any Governmental Authority shall exist, and no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or Governmental Authority, which purports to enjoin, prohibit, restrain or otherwise affect (i) the making of the Loans or providing the Letter of Credit Accommodations, or (ii) the consummation of the transactions contemplated pursuant to the terms hereof or the other Financing Agreements;

(c) other than with respect to the initial Loans made and initial Letter of Credit Accommodations provided, in each case, on the Effective Date, no Default or Event of Default shall exist or have occurred and be continuing on and as of the date of the making of such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto;

(d) after giving effect to the requested Tranche A Revolving Loan or Letter of Credit Accommodation, the outstanding Tranche A Revolving Loans and Letter of Credit Accommodation will not exceed the lesser of the Tranche A Maximum Credit or the Tranche A Borrowing Base as then in effect,

(e) after giving effect to the requested Tranche A-1 Revolving Loan, the outstanding Tranche A-1 Revolving Loans will not exceed the lesser of the Tranche A-1 Maximum Credit or the Tranche A-1 Borrowing Base as then in effect, and

(f) after giving effect to the requested Revolving Loan or Letter of Credit Accommodation, the outstanding Loans will not exceed the lesser of the Maximum Credit or the Total Borrowing Base as then in effect.

### **SECTION 13. GRANT AND PERFECTION OF SECURITY INTEREST**

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#### **13.1 Grant of Security Interest.**

(a) To secure payment and performance of all Obligations, each Borrower and Guarantor hereby grants to Administrative Agent, for itself and the benefit of Secured Parties, a continuing security interest in, a lien upon, and a right of set off against, and hereby assigns to Administrative Agent, for itself and the benefit of Secured Parties, as security, all personal and real property and fixtures, and interests in property and fixtures, of each Borrower and Guarantor, whether now owned or hereafter acquired or existing, and wherever located (together with all other collateral security for the Obligations at any time granted to or held or acquired by Administrative Agent or any Secured Party, collectively, the "Collateral"), including:

(i) all Accounts;

(ii) all general intangibles, including, without limitation, all Intellectual Property;

(iii) all goods, including, without limitation, Inventory and Equipment;

(iv) all Real Property and fixtures;

(v) all chattel paper, including, without limitation, all tangible and electronic chattel paper;

(vi) all instruments, including, without limitation, all promissory notes;

(vii) all documents;

(viii) all deposit accounts;

(ix) all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;

(x) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of Receivables and other Collateral, including (A) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (B) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (C) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables or other Collateral, including returned, repossessed and reclaimed goods, and (D) deposits by and property of Account Debtors or other persons securing the obligations of Account Debtors;

(xi) all (1) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and (2) monies, credit balances, deposits and other property of any Borrower or Guarantor now or hereafter held or received by or in transit to Administrative Agent, any Lender or its Affiliates or at any other depository or other institution from or for the account of any

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Borrower or Guarantor, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

(xii) all commercial tort claims, including, without limitation, those identified in the Information Certificate;

(xiii) to the extent not otherwise described above, all Receivables;

(xiv) all Prescription Files and other Records;

(xv) all Life Insurance Policies; and

(xvi) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

(b) Notwithstanding anything to the contrary set forth in Section 5.1(a) above, the types or items of Collateral described in such Section shall not include the following (the "Excluded Assets"): (i) deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any

Borrower's or Guarantor's employees), (ii) any rights or interests in any contract, lease, permit, license or license agreement covering real or personal property, if under the terms of such contract, lease, permit, license or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein is prohibited and such prohibition has not been waived or the consent of the other party to such contract, lease, permit, license or license agreement has not been obtained; provided, that, (A) the foregoing exclusion shall in no way be construed to apply (1) if any such prohibition is unenforceable under Sections 9-406, 9-407 or 9-408 of the UCC or other applicable law or (2) to the extent that any consent or waiver has been obtained that would permit Administrative Agent's security interest or lien notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement and (B) the foregoing exclusions shall in no way be construed so as to limit, impair or otherwise affect Administrative Agent's or any Lender's continuing security interests in and liens upon any rights or interests of any Borrower or Guarantor in or to (1) monies due or to become due under any such contract, lease, permit, license, license agreement or stock, or (2) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, license agreement or stock, (iii) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law; provided, that, upon submission and acceptance by the U.S. Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a), such intent-to-use trademark application shall be considered Collateral, (iv) shares of any Subsidiary that is a "controlled foreign corporation" in excess of sixty-five (65%) percent (or such greater percentage if pledging such greater amount would not result in adverse tax consequences to Borrowers) of all of the issued and outstanding shares of Capital Stock of such Subsidiary entitled to vote (within the meaning of Treasury Regulation Section 1.956-2) or (v) any alcoholic liquor of any Borrower or Guarantor, if under applicable law with respect thereto, the valid grant of a security interest or lien therein to Administrative Agent is prohibited and such prohibition is not capable of being waived or

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modified under such applicable law; provided, that, the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect Administrative Agent's unconditional continuing security interests in and liens upon all proceeds of any of the foregoing Excluded Assets and any rights or interests of such Borrower or Guarantor in or to monies due or to become due with respect to or under any contract, lease, permit, license, charter or license agreement (including any Receivables) with respect thereto.

### 13.2 Perfection of Security Interests.

(a) Each Borrower and Guarantor irrevocably and unconditionally authorizes Administrative Agent (or its agent) to file at any time and from time to time such financing statements with respect to the Collateral naming Administrative Agent or its designee as the secured party and such Borrower or Guarantor as debtor, as Administrative Agent may require, and including any other information with respect to such Borrower or Guarantor or otherwise required by part 5 of Article 9 of the Uniform Commercial Code of such jurisdiction as Administrative Agent may determine, together with any amendment and continuations with respect thereto, which authorization shall apply to all financing statements filed on, prior to or after the Effective Date. Each Borrower and Guarantor hereby ratifies and approves all financing statements naming Administrative Agent or its designee as secured party and such Borrower or Guarantor, as the case may be, as debtor with respect to the Collateral (and any amendments with

respect to such financing statements) filed by or on behalf of Administrative Agent prior to the Effective Date and ratifies and confirms the authorization of Administrative Agent to file such financing statements (and amendments, if any). Each Borrower and Guarantor hereby authorizes Administrative Agent to adopt on behalf of such Borrower and Guarantor any symbol required for authenticating any electronic filing. In the event that the description of the collateral in any financing statement naming Administrative Agent or its designee as the secured party and any Borrower or Guarantor as debtor includes assets and properties of such Borrower or Guarantor that do not at any time constitute Collateral, whether hereunder, under any of the other Financing Agreements or otherwise, the filing of such financing statement shall nonetheless be deemed authorized by such Borrower or Guarantor to the extent of the Collateral included in such description and it shall not render the financing statement ineffective as to any of the Collateral or otherwise affect the financing statement as it applies to any of the Collateral. In no event shall any Borrower or Guarantor at any time file, or permit or cause to be filed, any correction statement or termination statement with respect to any financing statement (or amendment or continuation with respect thereto) naming Administrative Agent or its designee as secured party and such Borrower or Guarantor as debtor.

(b) Each Borrower and Guarantor does not have any chattel paper (whether tangible or electronic) or instruments as of the Effective Date, except as set forth in the Information Certificate. In the event that any Borrower or Guarantor shall be entitled to or shall receive any chattel paper or instrument after the Effective Date, Borrowers and Guarantors shall promptly notify Administrative Agent thereof in writing. Promptly upon the receipt thereof by or on behalf of any Borrower or Guarantor (including by any agent or representative), such Borrower or Guarantor shall deliver, or cause to be delivered to Administrative Agent, all tangible chattel paper and instruments that such Borrower or Guarantor has or may at any time acquire, accompanied by such instruments of transfer or assignment duly executed in blank as

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Administrative Agent may from time to time specify, in each case except as Administrative Agent may otherwise agree. At Administrative Agent's option, each Borrower and Guarantor shall, or Administrative Agent may at any time on behalf of any Borrower or Guarantor, cause the original of any such instrument or chattel paper to be conspicuously marked in a form and manner acceptable to Administrative Agent with the following legend referring to chattel paper or instruments as applicable: "This [chattel paper][instrument] is subject to the security interest of Wells Fargo Capital Finance, LLC and any sale, transfer, assignment or encumbrance of this [chattel paper][instrument] violates the rights of such secured party."

(c) In the event that any Borrower or Guarantor shall at any time hold or acquire an interest in any electronic chattel paper or any "transferable record" (as such term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction), such Borrower or Guarantor shall promptly notify Administrative Agent thereof in writing. Promptly upon Administrative Agent's request, such Borrower or Guarantor shall take, or cause to be taken, such actions as Administrative Agent may request to give Administrative Agent control of such electronic chattel paper under Section 9-105 of the UCC and control of such transferable record under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as in effect in such jurisdiction.

(d) Each Borrower and Guarantor does not have any deposit accounts as of the Effective Date, except as set forth in the Information Certificate. Borrowers and Guarantors shall not, directly or indirectly, after the Effective Date open, establish or maintain any deposit account unless each of the following conditions is satisfied: (i) Administrative Agent shall have received not less than five (5) Business Days prior written notice of the intention of any Borrower or Guarantor to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Administrative Agent the name of the account, the owner of the account, the name and address of the bank at which such account is to be opened or established, the individual at such bank with whom such Borrower or Guarantor is dealing and the purpose of the account, (ii) the bank where such account is opened or maintained shall be acceptable to Administrative Agent, and (iii) on or before the opening of such deposit account, such Borrower or Guarantor shall as Administrative Agent may specify either (A) deliver to Administrative Agent a Deposit Account Control Agreement with respect to such deposit account duly authorized, executed and delivered by such Borrower or Guarantor and the bank at which such deposit account is opened and maintained or (B) arrange for Administrative Agent to become the customer of the bank with respect to the deposit account on terms and conditions acceptable to Administrative Agent. The terms of this subsection (d) shall not apply to deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Borrower's or Guarantor's salaried employees or deposit accounts for which a Deposit Account Control Agreement is not required pursuant to Section 6.3.

(e) No Borrower or Guarantor owns or holds, directly or indirectly, beneficially or as record owner or both, any investment property, as of the Effective Date, or have any investment account, securities account, commodity account or other similar account with any

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bank or other financial institution or other securities intermediary or commodity intermediary as of the Effective Date, in each case except as set forth in the Information Certificate.

(f) In the event that any Borrower or Guarantor shall be entitled to or shall at any time after the Effective Date hold or acquire any certificated securities, such Borrower or Guarantor shall promptly endorse, assign and deliver the same to Administrative Agent, accompanied by such instruments of transfer or assignment duly executed in blank as Administrative Agent may from time to time specify. If any securities, now or hereafter acquired by any Borrower or Guarantor are uncertificated and are issued to such Borrower or Guarantor or its nominee directly by the issuer thereof, such Borrower or Guarantor shall immediately notify Administrative Agent thereof and cause the issuer to agree to comply with instructions from Administrative Agent as to such securities, without further consent of any Borrower or Guarantor or such nominee.

(g) Borrowers and Guarantors shall not, directly or indirectly, after the Effective Date open, establish or maintain any investment account, securities account, commodity account or any other similar account (other than a deposit account) with any securities intermediary or commodity intermediary unless each of the following conditions is satisfied: (i) Administrative Agent shall have received not less than five (5) Business Days prior written notice of the intention of such Borrower or Guarantor to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Administrative Agent the name of the account, the owner of the account, the name and address of the securities intermediary or commodity

intermediary at which such account is to be opened or established, the individual at such intermediary with whom such Borrower or Guarantor is dealing and the purpose of the account, (ii) the securities intermediary or commodity intermediary (as the case may be) where such account is opened or maintained shall be acceptable to Administrative Agent, and (iii) on or before the opening of such investment account, securities account or other similar account with a securities intermediary or commodity intermediary, such Borrower or Guarantor shall execute and deliver, and cause to be executed and delivered to Administrative Agent, an Investment Property Control Agreement with respect thereto duly authorized, executed and delivered by such Borrower or Guarantor and such securities intermediary or commodity intermediary.

(h) Borrowers and Guarantors are not the beneficiary or otherwise entitled to any right to payment under any letter of credit, banker's acceptance or similar instrument as of the Effective Date, except as set forth in the Information Certificate. In the event that any Borrower or Guarantor shall be entitled to or shall receive any right to payment under any letter of credit, banker's acceptance or any similar instrument, whether as beneficiary thereof or otherwise after the Effective Date, such Borrower or Guarantor shall promptly notify Administrative Agent thereof in writing. Such Borrower or Guarantor shall immediately, as Administrative Agent may specify, either (i) deliver, or cause to be delivered to Administrative Agent, with respect to any such letter of credit, banker's acceptance or similar instrument, the written agreement of the issuer and any other nominated person obligated to make any payment in respect thereof (including any confirming or negotiating bank), in form and substance satisfactory to Administrative Agent, consenting to the assignment of the proceeds of the letter of credit to Administrative Agent by such Borrower or Guarantor and agreeing to make all payments thereon directly to Administrative Agent or as Administrative Agent may otherwise

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direct or (ii) cause Administrative Agent to become, at Borrowers' expense, the transferee beneficiary of the letter of credit, banker's acceptance or similar instrument (as the case may be).

(i) Borrowers and Guarantors do not have any commercial tort claims in excess of \$1,000,000 as of the Effective Date, except as set forth in the Information Certificate. In the event that any Borrower or Guarantor shall at any time after the Effective Date have any commercial tort claims, such Borrower or Guarantor shall promptly notify Administrative Agent thereof in writing, which notice shall (i) set forth in reasonable detail the basis for and nature of such commercial tort claim and (ii) include the express grant by such Borrower or Guarantor to Administrative Agent of a security interest in such commercial tort claim (and the proceeds thereof). In the event that such notice does not include such grant of a security interest, the sending thereof by such Borrower or Guarantor to Administrative Agent shall be deemed to constitute such grant to Administrative Agent. Upon the sending of such notice, any commercial tort claim described therein shall constitute part of the Collateral and shall be deemed included therein. Without limiting the authorization of Administrative Agent provided in Section 5.2(a) hereof or otherwise arising by the execution by such Borrower or Guarantor of this Agreement or any of the other Financing Agreements, Administrative Agent is hereby irrevocably authorized from time to time and at any time to file such financing statements naming Administrative Agent or its designee as secured party and such Borrower or Guarantor as debtor, or any amendments to any financing statements, covering any such commercial tort claim as Collateral. In addition, each Borrower and Guarantor shall promptly upon Administrative Agent's request, execute and deliver, or cause to be executed and delivered, to Administrative Agent such other agreements,

documents and instruments as Administrative Agent may require in connection with such commercial tort claim.

(j) Borrowers and Guarantors do not have any goods, documents of title or other Collateral in the custody, control or possession of a third party as of the Effective Date, except as set forth in the Information Certificate and except for goods located in the United States in transit to a location of a Borrower or Guarantor permitted herein in the ordinary course of business of such Borrower or Guarantor in the possession of the carrier transporting such goods. In the event that any goods, documents of title or other Collateral are at any time after the Effective Date in the custody, control or possession of any other person not referred to in the Information Certificate or such carriers, Borrowers and Guarantors shall promptly notify Administrative Agent thereof in writing. Promptly upon Administrative Agent's request, Borrowers and Guarantors shall deliver to Administrative Agent a Collateral Access Agreement duly authorized, executed and delivered by such person and the Borrower or Guarantor that is the owner of such Collateral.

(k) Borrowers and Guarantors shall take any other actions reasonably requested by Administrative Agent from time to time to cause the attachment, perfection and first priority of, and the ability of Administrative Agent to enforce, the security interest of Administrative Agent in any and all of the Collateral, including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC or other applicable law, to the extent, if any, that any Borrower's or Guarantor's signature thereon is required therefor, (ii) causing Administrative Agent's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment,

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perfection or priority of, or ability of Administrative Agent to enforce, the security interest of Administrative Agent in such Collateral, (iii) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Administrative Agent to enforce, the security interest of Administrative Agent in such Collateral, (iv) obtaining the consents and approvals of any Governmental Authority or third party, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, and taking all actions required by any earlier versions of the UCC or by other law, as applicable in any relevant jurisdiction.

(l) Notwithstanding anything in this Agreement to the contrary, Administrative Agent may determine, with respect to any specific items of Collateral, not to perfect its security interest therein based on the de minimis value thereof relative to the costs associated with such perfection.

#### **SECTION 14. COLLECTION AND ADMINISTRATION**

**14.1 Borrowers' Loan Accounts.** Administrative Agent shall maintain one or more loan account(s) on its books in which shall be recorded (a) all Loans, Letter of Credit Accommodations and other Obligations and the Collateral, (b) all payments made by or on behalf of any Borrower or Guarantor and (c) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest. All entries in the loan account(s) shall be made in accordance with Administrative Agent's customary practices as in effect from time to time.

**14.2 Statements.** Administrative Agent shall render to Lead Borrower each month a statement setting forth the balance in the Borrowers' loan account(s) maintained by

Administrative Agent for Borrowers pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall be subject to subsequent adjustment by Administrative Agent but shall, absent manifest errors or omissions, be considered correct and deemed accepted by Borrowers and Guarantors and conclusively binding upon Borrowers and Guarantors as an account stated except to the extent that Administrative Agent receives a written notice from Lead Borrower of any specific exceptions of Lead Borrower thereto within forty-five (45) days after the date such statement has been received by Lead Borrower. Until such time as Administrative Agent shall have rendered to Lead Borrower a written statement as provided above, the balance in any Borrower's loan account(s) shall be presumptive evidence of the amounts due and owing to Administrative Agent and Lenders by Borrowers and Guarantors.

#### 14.3 Collection of Accounts.

(a) Each Borrower and Guarantor shall establish and maintain, at its expense, deposit account arrangements and merchant payment arrangements with the banks set forth on Schedule 8.10 to the Information Certificate and subject to Section 5.2(d) hereof such other banks as such Borrower or Guarantor may hereafter select. The banks set forth on Schedule 8.10 to the Information Certificate constitute all of the banks with which Borrowers and Guarantors have deposit account arrangements and merchant payment arrangements as of the Effective Date

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and identifies each of the deposit accounts at such banks that are used solely for receiving store receipts from a retail store location of a Borrower (together with any other deposit accounts at any time established or used by any Borrower for receiving such store receipts from any retail store location, collectively, the "Store Accounts" and each individually, a "Store Account") or otherwise describes the nature of the use of such deposit account by such Borrower.

(i) Each Borrower shall deposit all proceeds from sales of Inventory in every form, including, without limitation, cash, checks, credit card sales drafts, credit card sales or charge slips or receipts and other forms of daily store receipts, from each retail store location of such Borrower (other than Medicare Accounts and Medicaid Accounts) into the Store Account of such Borrower used solely for such purpose in accordance with the current practices of such Borrower as of the Effective Date, but in any event no less frequently than (x) once every five (5) Business Days if Excess Availability is equal to or greater than \$250,000,000, or (y) once every three (3) Business Days if Excess Availability is less than \$250,000,000; ~~except, that~~, Borrowers may have up to \$12,500,000 in cash in the aggregate at all retail stores immediately after each deposit of funds from the stores into the applicable Store Accounts. All such funds deposited into the Store Accounts shall be sent by wire transfer or other electronic funds transfer on each Business Day to the Blocked Accounts as provided in Section 6.3(a)(iii) below, except nominal amounts which are required to be maintained in such Store Accounts under the terms of such Borrower's arrangements with the bank at which such Store Accounts are maintained (which amounts, together with all amounts held at the retail store locations and not yet deposited in the Store Accounts, shall not in the aggregate exceed \$12,500,000 at any one time, ~~except~~ to the extent from time to time additional amounts may be held in the retail stores or the Store Accounts on Saturday, Sunday or other days where the applicable depository bank is closed, which additional amounts are to be, and shall be, transferred on the next Business Day to the Blocked Accounts) and ~~except~~ as Administrative Agent may otherwise agree; ~~provided, that~~, the \$12,500,000 amount referenced above shall be automatically increased if the

aggregate number of retail store locations of Borrowers increases from the aggregate net number of retail store locations of Borrowers that exist on the date of this Agreement, by a pro rata amount based on such increase.

(ii) Each Borrower shall establish and maintain a separate lockbox and related deposit account into which such Borrower shall promptly deposit, and shall direct each Fiscal Intermediary or other Third Party Payor in accordance with the applicable Medicare and Medicaid regulations to directly remit, all payments in respect of any Medicare Accounts or Medicaid Accounts. Such separate lockboxes and related deposit accounts shall only be used for purposes of receiving payments in respect of Medicare Accounts and Medicaid Accounts and shall be under the sole control of the applicable Borrower; provided, that, (A) Borrowers shall authorize, direct and instruct the depository banks at which such separate lockboxes and deposit accounts are maintained to remit by federal funds wire transfer all funds received or deposited into such lockboxes and related deposit accounts amounts on deposit in such accounts on a daily basis to one of the Blocked Accounts or such bank account of Administrative Agent as Administrative Agent may from time to time designate for such purpose, which instructions by Borrowers to such banks may only be changed after not less than three (3) Business Days' prior written notice to such banks and Administrative Agent and (B) any change in such instructions

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without the prior written consent of Administrative Agent shall be an Event of Default hereunder.

(iii) Each Borrower shall establish and maintain, at its expense, deposit accounts with such banks as are reasonably acceptable to Administrative Agent (the "Blocked Accounts") into which each Borrower shall promptly either cause all amounts on deposit in the Store Accounts of such Borrower to be sent as provided in Section 6.3(a)(i) above or shall itself deposit or cause to be deposited all proceeds of Receivables or other Collateral, including all proceeds from sales of Inventory, all amounts payable to each Borrower from Credit Card Issuers and Credit Card Processors and all other proceeds of Collateral (but not including payments of Medicare Accounts or Medicaid Accounts that are sent to the separate lockbox and related deposit accounts established pursuant to clause (ii) above).

(iv) Borrowers and Guarantors shall deliver, or cause to be delivered to Administrative Agent a Deposit Account Control Agreement duly authorized, executed and delivered by each bank where a Blocked Account is maintained as provided in Section 5.2(d) hereof. At any time a Default or an Event of Default shall exist or have occurred and be continuing, promptly upon Administrative Agent's request, Borrowers and Guarantors shall deliver, or cause to be delivered, to Administrative Agent a Deposit Account Control Agreement duly authorized, executed and delivered by such banks where a Store Account is maintained as Administrative Agent shall specify. Without limiting any other rights or remedies of Administrative Agent or Lenders, Administrative Agent may, at its option, instruct the depository banks at which the Blocked Accounts are maintained to transfer all available funds received or deposited into the Blocked Accounts to the Administrative Agent Payment Account at any time there is a Cash Dominion Event. Without limiting any other rights or remedies of Administrative Agent or Lenders, in the event that a Deposit Account Control Agreement is in effect for a Store Account, then Administrative Agent may, at its option, instruct the depository bank at which the Store Account is maintained to transfer all available funds received or deposited into the Store Account to the Administrative Agent Payment Account at any time there is a Cash Dominion Event. As to the Blocked Accounts or the Store Accounts, as the case may be, Administrative Agent shall send to Lead Borrower

a copy of any such written instruction sent by Administrative Agent to the depository bank promptly thereafter. In the event that at any time ninety (90) days after Administrative Agent has instructed such depository banks to transfer such funds to the Administrative Agent Payment Account, a Cash Dominion Event no longer exists, upon Lead Borrower's written request received by Administrative Agent within five (5) Business Days after such Cash Dominion Event no longer exists, Administrative Agent shall rescind its prior instructions and give new instructions to such depository banks to transfer the funds on deposit in such accounts to such operating deposit account of Borrowers and Guarantors as Lead Borrower may specify in writing to Administrative Agent until such time as Administrative Agent is entitled to notify and shall notify the depository bank otherwise as provided above. At all times that Administrative Agent shall have notified any depository bank to transfer funds from a Blocked Account or Store Account to the Administrative Agent Payment Account, all payments made to such Blocked Accounts or Store Accounts, whether in respect of the Receivables, as proceeds of Inventory or other Collateral or otherwise shall be treated as payments to Administrative Agent in respect of the Obligations and therefore shall constitute the property of Administrative Agent and Lenders to the extent of the then outstanding Obligations.

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(b) For purposes of calculating the amount of the Loans available to each Borrower, such payments will be applied (conditional upon final collection) to the Obligations on the Business Day of receipt by Administrative Agent of immediately available funds in the Administrative Agent Payment Account provided such payments and notice thereof are received in accordance with Administrative Agent's usual and customary practices as in effect from time to time and within sufficient time to credit the applicable loan account on such day, and if not, then on the next Business Day. For the purposes of calculating interest on the Obligations, such payments or other funds received will be applied (conditional upon final collection) to the Obligations on the Business Day of receipt of immediately available funds by Administrative Agent in the Administrative Agent Payment Account provided such payments or other funds and notice thereof are received in accordance with Administrative Agent's usual and customary practices as in effect from time to time and within sufficient time to credit the applicable loan account on such day, and if not, then on the next Business Day. In the event that at any time or from time to time there are no Loans outstanding or the amounts on deposit in the Blocked Accounts are not being remitted to the Administrative Agent Payment Account, Administrative Agent shall be entitled to an administrative fee in an amount calculated based on the Interest Rate for SOFR Rate Loans (on a per annum basis) then in effect multiplied by the amount of the funds received in the Blocked Account for such day in accordance with the customary practice of Administrative Agent. The economic benefit of the timing in the application of payments (and the administrative fee with respect thereto, if applicable) shall be for the sole benefit of Administrative Agent.

(c) Each Borrower and Guarantor and their respective employees, agents and Subsidiaries shall, acting as trustee for Administrative Agent, receive, as the property of Administrative Agent, any monies, checks, notes, drafts or any other payment relating to and/or proceeds of Accounts or other Collateral which come into their possession or under their control and promptly upon receipt thereof, shall deposit or cause the same to be deposited in the Blocked Accounts, or remit the same or cause the same to be remitted, in kind, to Administrative Agent. In no event shall the same be commingled with any Borrower's or Guarantor's own funds. Borrowers agree to reimburse Administrative Agent on demand for any amounts owed or paid to any bank or other financial institution at which a Blocked Account or any other deposit account or

investment account is established or any other bank, financial institution or other person involved in the transfer of funds to or from the Blocked Accounts arising out of Administrative Agent's payments to or indemnification of such bank, financial institution or other person. The obligations of Borrowers to reimburse Administrative Agent for such amounts pursuant to this Section 6.3 shall survive the termination of this Agreement.

#### 14.4 Payments.

(a) All Obligations shall be payable to the Administrative Agent Payment Account as provided in Section 6.3 or such other place as Administrative Agent may designate from time to time. Prior to the occurrence of an Event of Default, Administrative Agent shall apply payments received or collected from any Borrower or Guarantor or for the account of any Borrower or Guarantor (including the monetary proceeds of collections or of realization upon any Collateral) as follows:

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(i) first, to the payment in full of any fees, indemnities or expense reimbursements then due to Administrative Agent from any Borrower or Guarantor;

(ii) second, ratably, to the payment in full of any fees, indemnities or expense reimbursements then due to Lenders and Issuing Bank from any Borrower or Guarantor;

(iii) third, ratably, to the payment in full of interest due in respect of any Loans (and including any Special Administrative Agent Advances);

(iv) fourth, to the payment in full of principal in respect of Special Administrative Agent Advances;

(v) fifth, to the payment in full of principal in respect of the Swing Line Loans;

(vi) sixth, ratably, to the payment in full of principal in respect of the Loans;

(vii) seventh, ratably, to pay or prepay any other Obligations whether or not then due, in such order and manner as Administrative Agent determines or to be held as cash collateral in connection with any Letter of Credit Accommodations or other contingent Obligations (but not including for this purpose any Obligations arising under or pursuant to any Bank Products); and

(viii) eighth, ratably, to pay or prepay any Obligations arising under or pursuant to Bank Products.

(b) On and after the occurrence of an Event of Default, Administrative Agent shall apply payments received or collected from any Borrower or Guarantor or for the account of any Borrower or Guarantor (including the monetary proceeds of collections or of realization upon any Collateral) as follows:

(i) first, to the payment in full of any fees, indemnities or expense reimbursements then due to Administrative Agent from any Borrower or Guarantor;

(ii) second, ratably, to the payment in full of any fees, indemnities or expense reimbursements then due to Lenders and Issuing Bank from any Borrower or Guarantor;

(iii) third, ratably, to the payment in full of interest due in respect of any Loans (and including any Special Administrative Agent Advances) other than Tranche A-1 Revolving Loans;

(iv) fourth, to the payment in full of principal in respect of Special Administrative Agent Advances;

(v) fifth, to the payment in full of principal in respect of the Swing Line Loans,

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(vi) sixth, ratably, to the payment in full of principal in respect of the Tranche A Revolving Loans and to be held as cash collateral in an amount equal to one hundred five (105%) percent of the Letter of Credit Accommodations,

(vii) seventh, ratably, to the payment in full of interest due in respect of the Tranche A-1 Revolving Loans;

(viii) eighth, ratably, to the payment in full of principal in respect of the Tranche A-1 Revolving Loans;

(ix) ninth, [reserved];

(x) tenth, [reserved];

(xi) eleventh, to pay or prepay any other Obligations whether or not then due, in such order and manner as Administrative Agent determines or to be held as cash collateral in connection with any contingent Obligations, other than in respect of Letter of Credit Accommodations (but not including for this purpose any Obligations arising under or pursuant to any Bank Products) and

(xii) twelfth, ratably, to pay or prepay any Obligations arising under or pursuant to Bank Products.

(c) Notwithstanding anything to the contrary contained in this Agreement, (i) unless so directed by Lead Borrower, or unless a Default or an Event of Default shall exist or have occurred and be continuing, Administrative Agent shall not apply any payments which it receives to any SOFR Rate Loans, except (A) on the expiration date of the Interest Period applicable to any such SOFR Rate Loans or (B) in the event that there are no outstanding Base Rate Loans and (ii) to the extent any Borrower uses any proceeds of the Loans or Letter of Credit Accommodations to acquire rights in or the use of any Collateral or to repay any Indebtedness used to acquire rights in or the use of any Collateral, payments in respect of the Obligations shall be deemed applied first to the Obligations arising from Loans and Letter of Credit Accommodations that were not used for such purposes and second to the Obligations arising from Loans and Letter of Credit Accommodations the proceeds of which were used to acquire rights in or the use of any Collateral in the chronological order in which such Borrower acquired such rights in or the use of such Collateral.

(d) At Administrative Agent's option, all principal, interest, fees, costs, expenses and other charges provided for in this Agreement or the other Financing Agreements may be charged directly to the loan account(s) of any Borrower maintained by Administrative Agent. Borrowers and Guarantors shall make all payments to Administrative Agent and Lenders on the Obligations free and clear of, and without deduction or withholding for or on account of, any setoff, counterclaim, defense, duties, taxes, levies, imposts, fees, deductions, withholding, restrictions or conditions of any

kind. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, Administrative Agent or any Lender is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and

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continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by Administrative Agent or such Lender. Borrowers and Guarantors shall be liable to pay to Administrative Agent, and do hereby indemnify and hold Administrative Agent and Lenders harmless for the amount of any payments or proceeds surrendered or returned. This Section 6.4(d) shall remain effective notwithstanding any contrary action which may be taken by Administrative Agent or any Lender in reliance upon such payment or proceeds. This Section 6.4 shall survive the payment of the Obligations and the termination of this Agreement.

#### 14.5 Authorization to Make Loans.

(a) Administrative Agent and Lenders are authorized to make the Loans (including Swing Line Loans) and provide the Letter of Credit Accommodations based upon written instructions received from anyone purporting to be a Responsible Officer of Lead Borrower or other authorized person designated by any of such persons from time to time to Administrative Agent (which may be delivered through Administrative Agent's Commercial Electronic Office Portal or through such other electronic portal provided by the Administrative Agent (the "Portal")) or, at the discretion of Administrative Agent, if such Revolving Loans are necessary to satisfy any Obligations. All Loans (including Swing Line Loans) and Letter of Credit Accommodations under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, any Borrower or Guarantor when deposited to the credit of any Borrower or Guarantor or otherwise disbursed or established in accordance with the instructions of any Borrower or Guarantor or in accordance with the terms and conditions of this Agreement.

(b) All requests for Revolving Loans (including Swing Line Loans) or Letter of Credit Accommodations hereunder shall specify the date on which the requested advance is to be made or Letter of Credit Accommodations established (which day shall be a Business Day) and the amount of the requested Loan. Each request for a borrowing consisting of a Base Rate Loan shall be made by electronic request of the Lead Borrower through the Portal, which must be received by the Administrative Agent not later than 2:00 p.m. on the requested date of any borrowing of Base Rate Loans. The Borrowers hereby acknowledge and agree that any request made through the Portal shall be deemed made by a Responsible Officer of the Borrowers. Each request for a borrowing consisting of a SOFR Rate Loan shall be made pursuant to the Lead Borrower's submission of a SOFR Loan Notice, which must be received by the Administrative Agent not later than 11:00 a.m. on (i) the U.S. Government Securities Business Day that is three (3) U.S. Government Securities Business Days prior to the requested date of any borrowing or continuation of Term SOFR Rate Loans, or (ii) the U.S. Government Securities Business Day that is five (5) U.S. Government Securities Business Days prior to the requested date of any borrowing or continuation of Daily Simple SOFR Loans. Each SOFR Loan Notice shall specify (i) the requested date of the borrowing or continuation, as the case may be (which shall be a Business Day), (ii) the principal amount of Term SOFR Rate Loans or Daily Simple SOFR Loans to be borrowed or continued, as applicable, and (iii) the duration of the Interest Period with respect thereto, as applicable. If the Lead Borrower fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. On the requested

date of any SOFR Rate Loan, (i) in the event that Base Rate Loans are outstanding in an amount equal to or

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greater than the requested SOFR Rate Loan, all or a portion of such Base Rate Loans shall be automatically converted to a SOFR Rate Loan in the amount requested by the Lead Borrower, and (ii) if Base Rate Loans are not outstanding in an amount at least equal to the requested SOFR Rate Loan, the Lead Borrower shall make an electronic request via the Portal for additional Base Rate Loans in an such amount, when taken with the outstanding Base Rate Loans (which shall be converted automatically at such time), as is necessary to satisfy the requested SOFR Rate Loan. If the Lead Borrower fails to make such additional request via the Portal as required pursuant to clause (ii) of the foregoing sentence, then the Borrowers shall be responsible for all amounts due pursuant to this Agreement arising on account of such failure. If the Lead Borrower fails to give a timely notice with respect to any continuation of a SOFR Rate Loan, then the applicable Loans shall be converted to Base Rate Loans, effective as of the last day of the Interest Period then in effect with respect to the applicable SOFR Rate Loans. All requests for a borrowing which are not made by electronic request of the Lead Borrower through the Portal shall be subject to (and unless the Administrative Agent elects otherwise in the exercise of its sole discretion, such borrowing shall not be made until the completion of) the Administrative Agent's authentication process (with results satisfactory to the Administrative Agent) prior to the funding of any such requested Loan.

**14.6 Use of Proceeds.** Borrowers shall use the initial proceeds of the Loans provided by Administrative Agent to Borrowers hereunder only for: (a) payments to each of the persons listed in the disbursement direction letter furnished by Borrowers to Administrative Agent on or about the Effective Date, (b) costs, expenses and fees in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Financing Agreements and (c) costs, expenses and fees in connection with the Nash-Finch Merger. All other Loans made or Letter of Credit Accommodations provided to or for the benefit of any Borrower pursuant to the provisions hereof shall be used by such Borrower only for general operating, working capital and other proper corporate purposes of such Borrower not otherwise prohibited by the terms hereof. None of the proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purposes of reducing or retiring any indebtedness which was originally incurred to purchase or carry any Margin Stock, for any purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation U of the FRB or for any purpose that violates the provisions of Regulation T, U or X of the FRB. No part of the proceeds of any Loan or Letter of Credit will be used, directly or to Borrowers' knowledge, indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person. No part of the proceeds of any Loan or Letter of Credit will be used, directly or to Borrowers' knowledge, indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

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**14.7 Appointment of Parent as Lead Borrower for Requesting Loans and Receipts of Loans and Statements.**

(a) Each Borrower hereby irrevocably appoints and constitutes Lead Borrower to request and receive Loans and Letter of Credit Accommodations pursuant to this Agreement and the other Financing Agreements from Administrative Agent or any Lender in the name or on behalf of such Borrower, to select the applicable Interest Rate for any such Loans or to take other actions contemplated as being taken by any Borrower under this Agreement or any of the other Financing Agreements. Administrative Agent and Lenders may disburse the Loans to such bank account of Lead Borrower or a Borrower or otherwise make such Loans to a Borrower and provide such Letter of Credit Accommodations to a Borrower as Lead Borrower may designate or direct, without notice to any other Borrower or Obligor. Notwithstanding anything to the contrary contained herein, Administrative Agent and Lead Borrower may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Lead Borrower hereby accepts the appointment by Borrowers to act for and on behalf of the other Borrowers pursuant to this Section 6.7. Lead Borrower shall ensure that the disbursement of any Loans to each Borrower requested by or paid to or for the account of Parent, or the issuance of any Letter of Credit Accommodations for a Borrower hereunder, shall be paid to or for the account of such Borrower.

(c) Each other Borrower and Guarantor hereby irrevocably appoints and constitutes Lead Borrower to receive statements on account and all other notices from Administrative Agent and Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Agreements and any statements or notices sent to or received by Lead Borrower shall be deemed received by each of the other Borrowers and Guarantors.

(d) Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any other Borrower or any Guarantor by Lead Borrower shall be deemed for all purposes to have been made by such Borrower or Guarantor, as the case may be, and shall be binding upon and enforceable against such Borrower or Guarantor to the same extent as if made directly by such Borrower or Guarantor.

(e) No purported termination of the appointment of Lead Borrower as agent as aforesaid shall be effective, except after ten (10) days' prior written notice to Administrative Agent.

**14.8 Pro Rata Treatment.** Except to the extent otherwise provided in this Agreement: (a) the making and conversion of Loans shall be made among the Lenders based on their respective Pro Rata Shares as to the Loans and (b) each payment on account of any Obligations to or for the account of one or more of Lenders in respect of any Obligations due on a particular day shall be allocated among the Lenders entitled to such payments based on their respective Pro Rata Shares and shall be distributed accordingly.

#### **14.9 Sharing of Payments, Etc.**

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(a) Each Borrower and Guarantor agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim Administrative Agent or any Lender may otherwise have, each Lender shall be entitled, at its option (but subject, as among Administrative Agent and Lenders, to the provisions of Section 12.3(b) hereof), to offset balances held by it for the account of such Borrower or Guarantor at any of its offices, in dollars or in any other currency, against any principal of or interest on any Loans owed to such Lender or any other amount payable to such Lender

hereunder, that is not paid when due (regardless of whether such balances are then due to such Borrower or Guarantor), in which case it shall promptly notify Lead Borrower and Administrative Agent thereof; provided, that, such Lender's failure to give such notice shall not affect the validity thereof.

(b) If any Lender (including Administrative Agent) shall obtain from any Borrower or Guarantor payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any of the other Financing Agreements through the exercise of any right of setoff, banker's lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received more than its Pro Rata Share of the principal of the Loans or more than its share of such other amounts then due hereunder or thereunder by any Borrower or Guarantor to such Lender than the percentage thereof received by any other Lender, it shall promptly pay to Administrative Agent, for the benefit of Lenders, the amount of such excess and simultaneously purchase from such other Lenders a participation in the Loans or such other amounts, respectively, owing to such other Lenders (or such interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) in accordance with their respective Pro Rata Shares or as otherwise agreed by Lenders. To such end all Lenders shall make appropriate adjustments among themselves (by the resale of participation sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) Each Borrower and Guarantor agrees that any Lender purchasing a participation (or direct interest) as provided in this Section may exercise, in a manner consistent with this Section, all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any right of setoff, banker's lien, counterclaims or similar rights or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other Indebtedness or obligation of any Borrower or Guarantor. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, assign such rights to Administrative Agent for the benefit of Lenders and, in any event, exercise its rights in respect of such secured claim in a manner consistent with the rights of Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

#### 14.10 Settlement Procedures; Defaulting Lenders.

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(a) In order to administer the Credit Facility in an efficient manner and to minimize the transfer of funds between Administrative Agent and Lenders, Administrative Agent may, at its option, subject to the terms of this Section, make available, on behalf of Lenders, including the Swing Line Lender, the full amount of the Loans requested or charged to any Borrower's loan account(s) or otherwise to be advanced by Lenders pursuant to the terms hereof, without requirement of prior notice to Lenders of the proposed Loans.

(b) With respect to all Revolving Loans made by Administrative Agent on behalf of Lenders as provided in this Section, the amount of each Lender's Pro Rata Share of the outstanding Revolving Loans shall be computed weekly, and shall be adjusted upward or downward on the basis of the amount of the outstanding Loans as of 5:00 p.m. Boston time on the Business Day immediately preceding the date of each settlement computation; provided, that, Administrative Agent retains the absolute right at any time or from time to time to make the above described adjustments at intervals more frequent than weekly, but in no event more than twice in any week. With respect to Swing Line Loans made by Swing Line Lender (or Administrative Agent on behalf of Swing Line Lender), Swing Line Lender (or Administrative Agent on behalf of Swing Line Lender) may settle on the Swing Line Loans from time to time as it determines, but not less frequently than once each week. Administrative Agent (or Swing Line Lender as to Swing Line Loans) shall deliver to each of the Tranche A Lenders and Tranche A-1 Lenders after the end of each week, or at such lesser period or periods as Administrative Agent (or Swing Line Lender as to Swing Line Loans) shall determine, a summary statement of the amount of outstanding Revolving Loans for such period (such week or lesser period or periods being hereinafter referred to as a "Settlement Period"). If the summary statement is sent by Administrative Agent (or Swing Line Lender in the case of Swing Line Loans) and received by a Lender prior to 12:00 p.m. Boston time, then such Lender shall make the settlement transfer described in this Section by no later than 3:00 p.m. Boston time on the same Business Day and if received by a Lender after 12:00 p.m. Boston time, then such Lender shall make the settlement transfer by not later than 3:00 p.m. Boston time on the next Business Day following the date of receipt. If, as of the end of any Settlement Period, the amount of a Lender's Pro Rata Share of the outstanding Revolving Loans is more than such Lender's Pro Rata Share of the outstanding Revolving Loans as of the end of the previous Settlement Period, then such Lender shall forthwith (but in no event later than the time set forth in the preceding sentence) transfer to Administrative Agent by wire transfer in immediately available funds the amount of the increase. Alternatively, if the amount of a Lender's Pro Rata Share of the outstanding Revolving Loans in any Settlement Period is less than the amount of such Lender's Pro Rata Share of the outstanding Revolving Loans for the previous Settlement Period, Administrative Agent shall forthwith transfer to such Lender by wire transfer in immediately available funds the amount of the decrease. Each Lender shall forthwith (but in no event later than the time set forth in the preceding sentence) transfer to Swing Line Lender (or upon its request to Administrative Agent) by wire transfer in immediately available funds the amount of such Lender's Pro Rata Share of the outstanding Swing Line Loans as set forth in the summary statement provided to such Lender as provided above. Amounts transferred to Swing Line Lender (or Administrative Agent as the case may be) in respect to a settlement of Swing Line Loans shall be applied to the payment of the Swing Line Loans and shall constitute Tranche A Revolving Loans of such Lenders. The obligation of each of the Lenders to transfer such funds and effect such settlement shall be irrevocable and unconditional and without recourse to or warranty by Administrative Agent.

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Administrative Agent and each Lender agrees to mark its books and records at the end of each Settlement Period to show at all times the dollar amount of its Pro Rata Share of the outstanding Revolving Loans and Letter of Credit Accommodations. Each Lender shall only be entitled to receive interest on its Pro Rata Share of the Revolving Loans to the extent such Revolving Loans have been funded by such Lender. Because the Administrative Agent on behalf of Lenders may be advancing and/or may be repaid Revolving Loans prior to the time when Lenders will actually advance and/or be repaid

such Revolving Loans, interest with respect to Revolving Loans shall be allocated by Administrative Agent in accordance with the amount of Revolving Loans actually advanced by and repaid to each Lender and the Administrative Agent and shall accrue from and including the date such Revolving Loans are so advanced to but excluding the date such Revolving Loans are either repaid by Borrowers or actually settled with the applicable Lender as described in this Section.

(c) To the extent that Administrative Agent has made any such amounts available and the settlement described above shall not yet have occurred, upon repayment of any Revolving Loans by a Borrower, Administrative Agent may apply such amounts repaid directly to any amounts made available by Administrative Agent pursuant to this Section. In lieu of weekly or more frequent settlements, Administrative Agent may, at its option, at any time require each Lender to provide Administrative Agent with immediately available funds representing its Pro Rata Share of each Revolving Loan, prior to Administrative Agent's disbursement of such Revolving Loan to Borrower. In such event, all Revolving Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares. No Lender shall be responsible for any default by any other Lender in the other Lender's obligation to make a Revolving Loan requested hereunder nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in the other Lender's obligation to make a Revolving Loan hereunder.

(d) If Administrative Agent is not funding a particular Revolving Loan to or for the benefit of a Borrower pursuant to Sections 6.10(a) and 6.10(b) on any day, but is requiring each Lender to provide Administrative Agent with immediately available funds on the date of such Revolving Loan, Administrative Agent may assume that each Lender will make available to Administrative Agent such Lender's Pro Rata Share of the Revolving Loan requested or otherwise made on such day and Administrative Agent may, in its discretion, but shall not be obligated to, cause a corresponding amount to be made available to or for the benefit of such Borrower on such day. If Administrative Agent makes such corresponding amount available to a Borrower and such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to Administrative Agent at the Federal Funds Rate for each day during such period (as published by the Federal Reserve Bank of New York or at Administrative Agent's option based on the arithmetic mean determined by Administrative Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that day by each of the three leading brokers of Federal funds transactions in New York City selected by Administrative Agent) and if such amounts are not paid within three (3) days of Administrative Agent's demand, at the highest Interest Rate provided for in Section 3.1 hereof applicable to Base Rate Loans. During the period in which

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such Lender has not paid such corresponding amount to Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any of the other Financing Agreements, the amount so advanced by Administrative Agent to or for the benefit of any Borrower shall, for all purposes hereof, be a Revolving Loan made by Administrative Agent for its own account.

(e) Upon any failure by a Lender to pay Administrative Agent (or Swing Line Lender) pursuant to the settlement described in Section 6.10(b) above or to pay Administrative Agent pursuant to Section 6.10(c) or 6.10(d), Administrative Agent shall

promptly thereafter notify Lead Borrower of such failure and Borrowers shall pay such corresponding principal amount to Administrative Agent for its own account within five (5) Business Days of Lead Borrower's receipt of such notice. The term "Defaulting Lender" shall mean (i) any Lender that has failed to fund any portion of the Loans, participations in Letter of Credit Accommodations or participations in Swing Line Loans required to be funded by it hereunder within two (2) Business Days of the date required to be funded by it hereunder, or has otherwise failed to pay over to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, and such failure has not been cured by the making of such funding or payment over to Administrative Agent or such Lender by such Lender within such two (2) Business Day period, unless such Lender notifies the Administrative Agent and Lead Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied (except to the extent that such Lender may be required to make the payment hereunder notwithstanding the failure of a condition precedent), (ii) any Lender that has notified Administrative Agent, any Lender, Issuing Bank, or any Borrower or Guarantor in writing that it will not or does not intend to comply with any of its funding obligations under this Agreement (and such Lender has not retracted such notification in writing) or has made a public statement in writing to the effect that it will not or does not intend to comply with its funding obligations under this Agreement (and such Lender has not retracted such public statement in writing), unless such writing or statement indicates that such position is based on such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied or (iii) any Lender that becomes or is insolvent or has a parent company that has become or is insolvent or becomes the subject of a bankruptcy or insolvency proceeding, or has a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment and has not obtained all required orders, approvals or consents of any court or other Governmental Authority to continue to fulfill its obligations hereunder, in form and substance reasonably satisfactory to Administrative Agent and Lead Borrower; provided, that, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreement made with such Lender.

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(f) 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) 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 definitions of Required Lenders, Required Tranche A Lenders, Required Tranche A-1 Lenders and Supermajority Lenders.

(ii) Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 10.1 or otherwise) or received by

Administrative Agent from a Defaulting Lender pursuant to Section 6.4(d) shall be applied at such time or times as may be determined by Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or Swing Line Lender hereunder; third, to provide cash collateral for the Issuing Banks' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 6.10(i) below; fourth, as Lead Borrower may request (so long as no Default or Event of Default exists or has occurred and is continuing), to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; fifth, if so determined by Administrative Agent and Lead Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Revolving Loans (including Swing Line Loans and Special Administrative Agent Advances) under this Agreement and (B) provide cash collateral for the benefit of Issuing Banks with respect to future Fronting Exposure of Issuing Banks; sixth, to the payment of any amounts owing to Lenders, the Issuing Banks or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default shall exist or have occurred and be continuing, to the payment of any amounts owing to Parent as a result of any judgment of a court of competent jurisdiction obtained by Parent 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 (A) such payment is a payment of the principal amount of any Revolving Loans or Letter of Credit Accommodations in respect of which such Defaulting Lender has not fully funded its appropriate share, and (B) such Revolving Loans were made or the related Letter of Credit Accommodations were issued at a time when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Revolving Loans of, and Letter of Credit Accommodations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of, or Letter of Credit Accommodations owed to, such Defaulting Lender until such time as all Revolving Loans and funded and unfunded participations in Obligations in respect of Letter of Credit Accommodations and Swing Line Loans are held by the Tranche A Lenders pro rata in accordance with the Commitments without giving effect to Section 6.10(f)(iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are

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applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to Section 6.10(i) below shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) With respect to certain fees:

(A) No Defaulting Lender shall be entitled to receive any unused line fee under Section 3.2(a) hereof for any period during which that Tranche A Lender or Tranche A-1 Lender is a Defaulting Lender (and Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(B) Each Defaulting Lender that is a Tranche A Lender shall be entitled to receive letter of credit fees under Section 2.4(b) hereof for any period during

which that Tranche A Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Share of the stated amount of Letter of Credit Accommodations for which it has provided cash collateral pursuant to Section 6.10(i) below.

(C) With respect to any unused line fee or letter of credit fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, Borrowers shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Obligations in respect of Letter of Credit Accommodations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to each Issuing Bank and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) All or any part of such Defaulting Lender's participation in Letter of Credit Accommodations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders who are Tranche A Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (A) the conditions set forth in Section 4.2 hereof are satisfied at the time of such reallocation (and, unless Borrowers shall have otherwise notified the Administrative Agent at such time, Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (B) such reallocation does not cause the aggregate outstanding Revolving Loans and participations in Letter of Credit Accommodations, Swing Line Loans and Special Administrative Agent Advances of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. 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) If the reallocation described in clause (iv) above cannot, or can only partially, be effected, Borrowers shall, without prejudice to any right or remedy available to it hereunder or under law, (A) first, prepay Swing Line Loans in an amount equal to the Swing

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Line Lender's Fronting Exposure and (B) second, provide cash collateral for the Issuing Banks' Fronting Exposure in accordance with Section 6.10(i) below.

(g) If Borrowers, Administrative Agent, Swing Line Lender and Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letter of Credit Accommodations and Swing Line Loans to be held pro rata by the Tranche A Lenders in accordance with the Tranche A Commitments (without giving effect to Section 6.10(a)(iv) above), whereupon such Lender will cease to be a Defaulting Lender; provided, that, (i) no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and (ii) 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.

(h) So long as any Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund any Swing Line Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Line Loan and (ii) no Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit Accommodations unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(i) At any time that there shall exist a Defaulting Lender that is a Tranche A Lender, within one (1) Business Day following the written request of Administrative Agent or any Issuing Bank (with a copy to Administrative Agent), Borrowers shall provide cash collateral to secure the Fronting Exposure of the Issuing Banks with respect to such Defaulting Lender (determined after giving effect to Section 6.10(f)(iv) above and any cash collateral provided by such Defaulting Lender) in an amount not less than one hundred five (105%) percent of the Fronting Exposure of the Issuing Banks.

(i) Borrowers, and to the extent provided by any Defaulting Lender that is a Tranche A Lender, such Defaulting Lender, hereby grants to, for the benefit of the Issuing Banks, and agrees to maintain, a first priority security interest in all such cash collateral as security for such Defaulting Lender's obligation to fund participations in respect of Obligations in connection with Letter of Credit Accommodations, to be applied pursuant to clause (i)(ii) below. If at any time Administrative Agent determines that such cash collateral is subject to any right or claim of any Person other than Administrative Agent and Issuing Banks as herein provided (other than liens permitted under Section 9.8 hereof), or that the total amount of such cash collateral is less than the amount specified above, Borrowers shall, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional cash collateral in an amount sufficient to eliminate such deficiency (after giving effect to any cash collateral provided by the Defaulting Lender).

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(ii) Notwithstanding anything to the contrary contained in this Agreement, cash collateral provided under this Section in respect of Letter of Credit Accommodations shall be applied to the satisfaction of the Defaulting Lender's (which is a Tranche A Lender) obligation to fund participations in respect of Obligations in connection with Letter of Credit Accommodations (including, as to cash collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the cash collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Cash collateral (or the appropriate portion thereof) provided to reduce any Issuing Bank's Fronting Exposure shall no longer be required to be held as cash collateral pursuant to this Section following (A) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (B) the determination by Administrative Agent and each Issuing Bank that there exists excess cash collateral; provided that, (1) the Person providing cash collateral and each Issuing Bank may agree that cash collateral shall be held to support future anticipated Fronting Exposure or other obligations and (2) to the extent that such cash collateral was provided by Borrowers, such cash collateral shall remain subject to the security interest granted pursuant to the Financing Agreements.

(j) Lead Borrower and Administrative Agent shall have the right, but not the obligation, at any time that there is a Defaulting Lender, and upon the exercise by

either Lead Borrower or Administrative Agent of such right, such Defaulting Lender shall have the obligation, to sell, assign and transfer to an Eligible Transferee designated by Lead Borrower and approved by Administrative Agent or designated by Administrative Agent after consultation with Lead Borrower, the Commitment of such Defaulting Lender and all rights and interests of such Defaulting Lender pursuant thereto. Lead Borrower or Administrative Agent, as the case may be, shall provide the Defaulting Lender (and the Lead Borrower or the Administrative Agent as the case may be) with prior written notice of its intent to exercise its right under this Section, which notice shall specify the date on which such purchase and sale shall occur. Such purchase and sale shall be pursuant to the terms of an Assignment and Acceptance (whether or not executed by the Defaulting Lender), except that on the date of such purchase and sale, the Eligible Transferee specified by Lead Borrower and approved by Administrative Agent or Administrative Agent, shall pay to the Defaulting Lender (except as Administrative Agent and such Defaulting Lender may otherwise agree) the amount equal to: (i) the principal balance of the Loans held by the Defaulting Lender outstanding as of the close of business on the Business Day immediately preceding the effective date of such purchase and sale, plus (ii) amounts accrued and unpaid in respect of interest and fees payable to the Defaulting Lender to the effective date of the purchase (but in no event shall the Defaulting Lender be deemed entitled to any early termination fee), minus (iii) the amount of the closing fee received by the Defaulting Lender pursuant to the terms hereof or of any of the other Financing Agreements multiplied by the fraction, the numerator of which is the number of months remaining in the then current term of the Credit Facility and the denominator of which is the number of months in the then current term thereof. Such purchase and sale shall be effective on the date of the payment of such amount to the Defaulting Lender and the Commitment of the Defaulting Lender shall terminate on such date.

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(k) Nothing in this Section or elsewhere in this Agreement or the other Financing Agreements shall be deemed to require Administrative Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitment hereunder or to prejudice any rights that any Borrower may have against any Lender as a result of any default by any Lender hereunder in fulfilling its Commitment.

#### 14.11 Taxes.

(a) Any and all payments by or on account of any of the Obligations shall be made free and clear of and without deduction or withholding for or on account of, duties, taxes, levies, imposts, fees, deductions, charges or withholdings of any kind imposed by any Governmental Authority with respect to such payments, excluding (i) in the case of each Lender, Issuing Bank and Administrative Agent (A) duties, taxes, levies, imposts, fees, deductions, charges, or withholdings of any kind measured by its net income, and franchise taxes imposed on it, by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender, Issuing Bank or Administrative Agent (as the case may be) is incorporated or otherwise organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located and (B) any United States withholding taxes payable with respect to payments under the Financing Agreements under laws (including any statute, treaty or regulation) in effect on the Effective Date (or, in the case of an Eligible Transferee, the date of the Assignment and Acceptance) applicable to such Lender, Issuing Bank or Administrative Agent, as the case may be, but not excluding any United States withholding taxes payable as a result of any change in such laws occurring after the Effective Date (or the date of such Assignment and Acceptance) (ii) in the case of

each Lender, Issuing Bank or Administrative Agent, duties, taxes, levies, imposts, fees, deductions, charges or withholdings of any kind imposed on it as a result of a present or former connection between such Lender, Issuing Bank or Administrative Agent (as the case may be) and the jurisdiction imposing such duties, taxes, levies, imposts, fees, deductions, charges or withholdings but excluding any such connection arising from the activities of such Lender, Issuing Bank or Administrative Agent (as the case may be) pursuant to or in respect of this Agreement or any of the other Financing Agreements including but not limited to, executing delivering or performing its obligations or receiving a payment under or enforcing this Agreement or any of the other Financing Agreements and (iii) any United States federal withholding taxes imposed under FATCA (all such non-excluded duties, taxes, levies, imposts, fees, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes").

(b) Subject to the second to last sentence of Section 6.11(g), if any Taxes shall be required by law to be deducted from or in respect of any sum payable in respect of the Obligations to any Lender, Issuing Bank or Administrative Agent (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 6.11), such Lender, Issuing Bank or Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the relevant Borrower or Guarantor shall make such deductions, (iii) the relevant Borrower or Guarantor shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law and (iv) the relevant Borrower or Guarantor shall deliver to Administrative Agent evidence of such payment.

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(c) In addition, each Borrower and Guarantor agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies of the United States or any political subdivision thereof or any applicable foreign jurisdiction, and all liabilities with respect thereto, in each case arising from any payment made hereunder or under any of the other Financing Agreements or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any of the other Financing Agreements (collectively, "Other Taxes").

(d) Subject to the second to last sentence of Section 6.11(g), each Borrower and Guarantor shall indemnify each Lender, Issuing Bank and Administrative Agent for the full amount of Taxes and Other Taxes (including any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 6.11) paid by such Lender, Issuing Bank or Administrative Agent (as the case may be) and any liability (including for penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days from the date such Lender, Issuing Bank or Administrative Agent (as the case may be) makes written demand therefor. A certificate as to the amount of such payment or liability delivered to Lead Borrower by a Lender, an Issuing Bank (with a copy to Administrative Agent) or by Administrative Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(e) As soon as practicable after any payment of Taxes or Other Taxes by any Borrower or Guarantor, such Borrower or Guarantor shall furnish to Administrative Agent, at its address referred to herein, the original or a certified copy of a receipt evidencing payment thereof.

(f) Without prejudice to the survival of any other agreements of any Borrower or Guarantor hereunder or under any of the other Financing Agreements, the agreements and obligations of such Borrower or Guarantor contained in this Section 6.11 shall survive the termination of this Agreement and the payment in full of the Obligations.

(g) Any Foreign Lender shall, on the date it becomes a party to this Agreement (whether as an assignee of an interest under this Agreement pursuant to Sections 13.7(a) or 13.7(f) or otherwise), or upon any change in its lending office, deliver to Lead Borrower and Administrative Agent: (i) duly completed copies of Internal Revenue Service Form W-8BEN claiming exemption from, or a reduction to, withholding tax under an income tax treaty, or any successor form, (ii) duly completed copies of Internal Revenue Service Form W-8ECI claiming exemption from withholding because the income is effectively connection with a U.S. trade or business or any successor form, (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Sections 871(h) or 881(c) of the Code, (A) a certificate of the Lender to the effect that such Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of a Borrower within the meaning of Section 881(c)(3)(B) of the Code or a “controlled foreign corporation” described and Section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN claiming exemption from withholding under the portfolio interest exemption or any successor form or (iv) any other applicable form, certificate or document prescribed by applicable law as a basis for claiming exemption from or a reduction in United States

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withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit a Borrower to determine the withholding or deduction required to be made. Unless Lead Borrower and Administrative Agent have received forms or other documents satisfactory to them indicating that payments hereunder or under any of the other Financing Agreements to or for a Foreign Lender are not subject to United States withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, Borrowers, Guarantors or Administrative Agent shall withhold amounts required to be withheld by applicable requirements of law from such payments at the applicable statutory rate. Borrowers and Guarantors shall not be required to indemnify any Foreign Lender or to pay any additional amounts to any Foreign Lender in respect of U.S. withholding tax pursuant Section 6.11(b) or 6.11(d) above to the extent that the obligation to pay such additional amounts would not have arisen but for a failure by such Foreign Lender to comply with the provisions of this Section 6.11(g). Should a Lender become subject to Taxes because of its failure to deliver a form required hereunder, Borrowers and Guarantors shall, at such Lender's expense, take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes.

(h) Any Lender claiming any additional amounts payable pursuant to this Section 6.11 shall use its reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its applicable lending office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that would be payable or may thereafter accrue and would not, in the sole determination of such Lender, be otherwise disadvantageous in any material respect to such Lender.

(i) If the Borrowers or Guarantors pay any additional amount pursuant to this Section 6.11 with respect to any Lender, such Lender shall use reasonable efforts to obtain a refund of tax or credit against its tax liabilities on account of such payment;

provided that, such Lender shall have no obligation to use such reasonable efforts to obtain a credit if it is in an excess foreign tax credit position and shall have no obligation to use such reasonable efforts if it believes in good faith that claiming a refund or credit would cause adverse tax consequences to it. In the event that such Lender receives such a refund or credit, such Lender shall pay to the Borrowers or Guarantors an amount that such Lender reasonably determines is equal to the net tax benefit obtained by such Lender as a result of such payment by the Borrowers or Guarantors, as applicable, so as to leave such Lender in no worse position than in which it would have been in if payment of the relevant additional amount had not been made. Nothing contained in this Section 6.11(i) shall require a Lender to disclose or detail the basis of its calculation of the amount of any tax benefit or any other amount or the basis of its determination referred to in the proviso to the first sentence of this Section 6.11(j) to the Borrowers, Guarantors or any other party.

(j) If a payment made to Administrative Agent or a Lender under any Financing Agreement would be subject to U.S. federal withholding Tax imposed by FATCA if Administrative Agent or such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), Administrative Agent or such Lender shall deliver to Lead Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or Administrative Agent such documentation prescribed by

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applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Lead Borrower or Administrative Agent as may be necessary for Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine, as applicable, that Administrative Agent or such Lender has complied with Administrative Agent's or such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (j), the term "FATCA" shall include any amendments to FATCA after the date of this Agreement.

**14.12 Obligations Several; Independent Nature of Lenders' Rights.** The obligation of each Lender hereunder is several, and no Lender shall be responsible for the obligation or commitment of any other Lender hereunder. Nothing contained in this Agreement or any of the other Financing Agreements and no action taken by the Lenders pursuant hereto or thereto shall be deemed to constitute the Lenders to be a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and subject to Section 12.3 hereof, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

**14.13 Bank Products.** Borrowers and Guarantors, or any of their Subsidiaries, may (but no such Person is required to) request that the Bank Product Providers provide or arrange for such Person to obtain Bank Products from Bank Product Providers, and each Bank Product Provider may, in its sole discretion, provide or arrange for such Person to obtain the requested Bank Products. Borrowers and Guarantors or any of their Subsidiaries that obtain Bank Products shall indemnify and hold Administrative Agent, each Lender and their respective Affiliates harmless from any and all obligations now or hereafter owing to any other Person by any Bank Product Provider in connection with any Bank Products other than for gross negligence or willful misconduct on the part of any such indemnified Person. This Section 6.13 shall survive

the payment of the Obligations and the termination of this Agreement. Borrower and its Subsidiaries acknowledge and agree that the obtaining of Bank Products from Bank Product Providers (a) is in the sole discretion of such Bank Product Provider, and (b) is subject to all rules and regulations of such Bank Product Provider.

## **SECTION 15. COLLATERAL REPORTING AND COVENANTS**

### **15.1 Collateral Reporting.**

(a) Borrowers shall provide Administrative Agent with the following documents in a form reasonably satisfactory to Administrative Agent:

(i) as soon as possible after the end of each fiscal four (4) week period of Borrowers and Guarantors determined in accordance with the current accounting practices of Borrowers and Guarantors as of the Effective Date (but in any event within ten (10) Business Days after the end thereof), or weekly (but in any event by no later than Wednesday of each week) at any time that Excess Availability is less than an amount equal to fifteen (15%) percent of the Total Borrowing Base (and in such event the delivery of Borrowing Base Certificates on a weekly basis shall continue for not less than four (4) consecutive weeks), or more frequently as

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Administrative Agent may request at any time that a Default or Event of Default shall exist or have occurred, a Borrowing Base Certificate setting forth the calculation of each of the Tranche A Borrowing Base and Tranche A-1 Borrowing Base as of the last Business Day of the immediately preceding period as to the Accounts, Inventory, Prescription Files, unaffixed Tax Stamps, Equipment, Rolling Stock and Real Property duly completed and executed by the chief financial officer, vice president of finance, corporate treasurer or controller of Parent, together with all schedules required pursuant to the terms of the Borrowing Base Certificate duly completed (including a recap of all Accounts created, collections received and credit memos issued for the immediately preceding period);

(ii) the reports set forth on Schedule 7.1.

(b) Nothing contained in any Borrowing Base Certificate shall be deemed to limit, impair or otherwise affect the rights of Administrative Agent contained herein and in the event of any conflict or inconsistency between the calculation of the Tranche A Borrowing Base or the Tranche A-1 Borrowing Base as set forth in any Borrowing Base Certificate and as determined by Administrative Agent in good faith, the determination of Administrative Agent shall govern and be conclusive and binding upon Borrowers and Guarantors. Without limiting the foregoing, Borrowers shall furnish to Administrative Agent any information which Administrative Agent may reasonably request regarding the determination and calculation of any of the amounts set forth in any Borrowing Base Certificate. Each of the Tranche A Borrowing Base or the Tranche A-1 Borrowing Base may be adjusted based on the information set forth in the reports received by Administrative Agent under this Section 7.1. If any Borrower's or Guarantor's records or reports of the Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, such Borrower and Guarantor hereby irrevocably authorizes such service, contractor, shipper or agent to deliver such records, reports, and related documents to Administrative Agent and to follow Administrative Agent's instructions with respect to further services at any time that an Event of Default exists or has occurred and is continuing.

### **15.2 Accounts Covenants.**

(a) Borrowers shall notify Administrative Agent promptly of: (i) any material delay in any Borrower's or performance of any of its material obligations to any Account Debtor or the assertion of any material claims, offsets, defenses or counterclaims by any Account Debtor, or any material disputes with Account Debtors, or any settlement, adjustment or compromise thereof, (ii) all material adverse information known to any Borrower or Guarantor relating to the financial condition of any Account Debtor reasonably likely to adversely impact the collectability or enforceability of an Account, (iii) any event or circumstance which, to the best of any Borrower's or Guarantor's knowledge, would cause Administrative Agent to consider any then existing material Accounts as no longer constituting Eligible Accounts, (iv) any notice of a material default by any Borrower under any of the Credit Card Agreements or of any default which might result in the Credit Card Issuer or Credit Card Processor ceasing to make payments or suspending payments to any Borrower, (v) any notice from any Credit Card Issuer or Credit Card Processor that such person is ceasing or suspending, or will cease or suspend, any present or future payments due or to become due to any Borrower from such person, or that such person is terminating or will terminate any of the Credit Card Agreements,

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and (vi) the failure of any Borrower to comply with any material terms of the Credit Card Agreements or any terms thereof which might result in the Credit Card Issuer or Credit Card Processor ceasing or suspending payments to any Borrower. No credit, discount, allowance or extension or agreement for any of the foregoing in excess of \$100,000 shall be granted to any Account Debtor without Administrative Agent's consent, except in the ordinary course of a Borrower's or Guarantor's business in accordance with its practices and policies previously disclosed in writing to Administrative Agent and except as set forth in the schedules delivered to Administrative Agent pursuant to Section 7.1(a) above. So long as no Event of Default exists or has occurred and is continuing, Borrowers and Guarantors shall settle, adjust or compromise any claim, offset, counterclaim or dispute with any Account Debtor. At any time that an Event of Default exists or has occurred and is continuing, Administrative Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with Account Debtors or grant any credits, discounts or allowances.

(b) With respect to each Account: (i) the amounts shown on any invoice delivered to Administrative Agent or schedule thereof delivered to Administrative Agent shall be true and complete in all material respects, (ii) no payments shall be made thereon except payments immediately delivered to Blocked Accounts (or other deposit accounts in the case of Medicare Accounts and Medicaid Accounts identified to Administrative Agent that are used exclusively for handling payments or other remittances in respect of such Accounts), in each case, maintained in accordance with the terms of this Agreement, (iii) no credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any Account Debtor except as reported to Administrative Agent in accordance with this Agreement and except for credits, discounts, allowances or extensions made or given in the ordinary course of each Borrower's business in accordance with practices and policies previously disclosed to Administrative Agent, (iv) there shall be no setoffs, deductions, contra, defenses, counterclaims or disputes existing or asserted with respect thereto except as reported to Administrative Agent in accordance with the terms of this Agreement, (v) none of the transactions giving rise thereto will violate any applicable foreign, Federal, State or local laws or regulations, all documentation relating thereto will be legally sufficient under such laws and regulations and all such documentation will be legally enforceable in accordance with its terms.

(c) No Borrower or Guarantor shall purchase goods from suppliers and deliver goods that give rise to Military Receivables, except Grocery Supply Acquisition Corp. and Nash Finch, provided, that, Lead Borrower may, subject to and in accordance with the terms hereof, establish a separate subsidiary that is only engaged in the business of purchasing goods from suppliers and delivering goods giving rise to Military Receivables, provided, that, such separate subsidiary or subsidiaries shall be a Borrower hereunder and shall satisfy all of the requirements of Section 9.24, including the execution and delivery of such agreements and documents as Administrative Agent may reasonably request in connection therewith.

(d) Administrative Agent shall have the right at any time or times, in Administrative Agent's name or in the name of a nominee of Administrative Agent, to verify the validity, amount or any other matter relating to any Receivables or other Collateral, by mail, telephone, facsimile transmission or otherwise.

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**15.3 Inventory Covenants.** With respect to the Inventory: (a) each Borrower and Guarantor shall at all times maintain correct and accurate inventory records in a manner consistent with its current practices as of the Effective Date (except to the extent of changes in such practices as a result of the establishment of a reliable, consistent and accurate perpetual inventory system at the Retail Division for pharmacy and non-perishables), (b) Borrowers and Guarantors shall, or a third party inventory counting service on behalf of Borrowers and Guarantors shall, conduct a physical count of the Inventory at least twice each fiscal year as to non-perishable Inventory of the Retail Division (or on and after the establishment of a retail perpetual inventory system for pharmacy or non-perishables at the Retail Division that is satisfactory to Borrowers and Administrative Agent, one (1) time each year with respect to pharmacy and/or non-perishables, as applicable, whether through periodic cycle counts or otherwise) and once each fiscal four (4) week period of Borrowers and Guarantors (determined in accordance with the current accounting practices of Borrowers and Guarantors as of the Effective Date) as to the perishable Inventory of the Retail Division, and at least once each year, whether through periodic cycle counts or otherwise, as to the Inventory of the Distribution Division, but in each case at any time or times as Administrative Agent may request on or after an Event of Default, and promptly following any such physical inventory shall supply Administrative Agent with a report in the form and with such specificity as may be reasonably satisfactory to Administrative Agent concerning such physical count; (c) Borrowers and Guarantors shall not remove any Inventory from the locations set forth or permitted herein, without the prior written consent of Administrative Agent, except for sales, returns or transfers of Inventory in the ordinary course of its business that are reported to Administrative Agent in accordance with the terms hereof and except to move Inventory directly from one location set forth or permitted herein to another such location and except for Inventory shipped from the manufacturer thereof to such Borrower or Guarantor which is in transit to the locations set forth or permitted herein; (d) Borrowers shall, at their expense, (i) not less than one (1) time in any twelve (12) month period, if Excess Availability at all times during such twelve (12) month period is greater than an amount equal to twenty (20%) percent of the Total Borrowing Base, (ii) not less than two (2) times in any twelve (12) month period, if Excess Availability at any time during such twelve (12) month period is less than or equal to an amount equal to twenty (20%) percent of the Total Borrowing Base and (iii) at any time or times as Administrative Agent may request on or after an Event of Default or at Administrative Agent's own expense, in each case, deliver or cause to be delivered to Administrative Agent written appraisals as to the Inventory in form, scope and methodology reasonably acceptable to Administrative Agent and by an appraiser

acceptable to Administrative Agent, addressed to Administrative Agent and Lenders and upon which Administrative Agent and Lenders are expressly permitted to rely, provided, that, unless an Event of Default exists or if Excess Availability at such time is less than thirty-five (35%) percent of the Total Borrowing Base, Administrative Agent, at its sole discretion after the request by Borrowers, may agree to defer for a period of six months (but not more than two times during the term of this Agreement and not for consecutive six month periods) the delivery of any such appraisal required hereunder; (e) Borrowers and Guarantors shall produce, use, store and maintain the Inventory with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws in all material respects (including the requirements of the Federal Fair Labor Standards Act of 1938, as amended and all rules, regulations and orders related thereto); (f) as between Administrative Agent and Lenders, on the one hand, and Borrowers and Guarantors, on the other hand, each

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Borrower and Guarantor assumes all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Inventory (but nothing contained herein shall be construed as the basis for any liability of any Borrower or Guarantor as to any third party); (g) Borrowers and Guarantors shall not sell Inventory to any customer on approval, or any other basis which entitles the customer to return or may obligate any Borrower or Guarantor to repurchase such Inventory; except for the right of return given to retail customers of Borrowers in the ordinary course of business and in accordance with the then current return policy of Borrowers; (h) Borrowers and Guarantors shall keep the Inventory in good and marketable condition; and (i) upon Administrative Agent's request, Borrowers shall, at their expense, conduct through an inventory counting service acceptable to Administrative Agent, a physical count of the Inventory of the Retail Division in form, scope and methodology acceptable to Administrative Agent (but only to the extent that a physical count that is acceptable to Borrowers and Administrative Agent has not been conducted by such inventory counting service within the immediately preceding two fiscal quarters so long as no Default or Event of Default shall exist or have occurred or four (4) fiscal week period of Borrowers and Guarantors (determined in accordance with the current accounting principles of Borrowers and Guarantors as of the Effective Date) at any time a Default or Event of Default shall exist or have occurred, the results of which shall be reported directly by such inventory counting service to Administrative Agent and Borrowers shall promptly deliver confirmation to Administrative Agent that appropriate adjustments have been made to the inventory records of Borrowers to reconcile the inventory count to the inventory records of Borrowers.

**15.4 Equipment and Real Property Covenants.** With respect to the Equipment and Real Property: (a) Borrowers and Guarantors shall, at their expense, (i) not less than one (1) time in any twelve (12) month period, if Excess Availability at all times during such twelve (12) month period is greater than an amount equal to twenty (20%) percent of the Total Borrowing Base (provided, that, so long as Excess Availability is greater than such amount for such twelve (12) month period, with respect to Real Property with a fair market value of less than \$1,000,000 as set forth in the appraisals most recently received by Administrative Agent with respect to such Real Property prior to the Effective Date, such appraisal shall be in the discretion of Administrative Agent for such Real Property which, in the aggregate, has a fair market value of less than \$10,000,000), (ii) not less than two (2) times in any twelve (12) month period, if Excess Availability at any time during such twelve (12) month period is less than or equal to an amount equal to twenty (20%) percent of the Total Borrowing Base and (iii) at any time or times as Administrative Agent may request on or after an Event of Default or at Administrative Agent's own expense, deliver or cause to be delivered to Administrative

Agent written appraisals as to the Equipment and/or the Real Property in form, scope and methodology reasonably acceptable to Administrative Agent and by an appraiser acceptable to Administrative Agent, addressed to Administrative Agent and upon which Administrative Agent is expressly permitted to rely, provided, that, unless an Event of Default exists or if Excess Availability at such time is less than thirty-five (35%) percent of the Total Borrowing Base, Administrative Agent, at its sole discretion after the request by Borrowers, may agree to defer for a period of six months (but not more than two times during the term of this Agreement and not, with respect to Equipment, for consecutive six month periods) the delivery of any such appraisal required hereunder; (b) Borrowers and Guarantors shall keep the Equipment in good order, repair, running and marketable condition (ordinary wear and tear excepted); (c) Borrowers and Guarantors shall use

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the Equipment and Real Property with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with all applicable laws in all material respects; (d) the Equipment is and shall be used in the business of Borrowers and Guarantors and not for personal, family, household or farming use; (e) Borrowers and Guarantors shall not remove any Equipment from the locations set forth or permitted herein, except to the extent necessary to have any Equipment repaired, replaced or maintained in the ordinary course of its business or to move Equipment directly from one location set forth or permitted herein to another such location and except for the movement of motor vehicles used by or for the benefit of such Borrower or Guarantor in the ordinary course of business; (f) the Equipment is now and shall remain personal property and Borrowers and Guarantors shall not permit any of the Equipment to be or become a part of or affixed to real property (but not including for this purpose any plumbing and electrical fixtures, heating, ventilation and air conditioning, wall and floor coverings, walls or ceilings and other fixtures not constituting trade fixtures); and (g) as between Administrative Agent and Lenders, on the one hand, and Borrowers and Guarantors, on the other hand, each Borrower and Guarantor assumes all responsibility and liability arising from or relating to the use, sale or other disposition of the Equipment (but nothing contained herein shall be construed as the basis for any liability of any Borrower or Guarantor as to any third party).

**15.5 Prescription Files Covenants.** With respect to the Prescription Files: (a) each Borrower and Guarantor shall at all times maintain the Prescription Files in a manner consistent with the requirements of Federal, State and local laws and regulations in all material respects, including all Health Care Laws, which files and records related thereto shall be correct and accurate; (b) Borrowers and Guarantors shall not remove any Prescription Files from the locations set forth or permitted herein, without providing prior notice to Administrative Agent, except for transfers of Prescription Files in the ordinary course of its business (including at the request of customers with respect to such customer's own Prescription Files) and except to move Prescription Files directly from one location set forth or permitted herein to another such location; (c) Borrowers shall, at their expense, (i) not less than one (1) time in any twelve (12) month period, if Excess Availability at all times during such twelve (12) month period is greater than an amount equal to twenty (20%) percent of the Total Borrowing Base, (ii) not less than two (2) times in any twelve (12) month period, if Excess Availability at any time during such twelve (12) month period is less than or equal to an amount equal to twenty (20%) percent of the Total Borrowing Base and (iii) at any time or times as Administrative Agent may request on or after an Event of Default or at Administrative Agent's own expense, in each case, deliver or cause to be delivered to Administrative Agent written appraisals as to the Prescription Files in form, scope and methodology reasonably acceptable to Administrative Agent and by an appraiser acceptable to Administrative

Agent, addressed to Administrative Agent and Lenders and upon which Administrative Agent and Lenders are expressly permitted to rely, provided, that, unless an Event of Default exists or if Excess Availability at such time is less than thirty-five (35%) percent of the Total Borrowing Base, Administrative Agent, at its sole discretion after the request by Borrowers, may agree to defer for a period of six months (but not more than two times during the term of this Agreement and not for consecutive six month periods) the delivery of any such appraisal required hereunder; (d) Borrowers and Guarantors shall use, store and maintain the Prescription Files with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws (including the requirements of

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the HIPAA, as amended and all rules, regulations and orders related thereto) in all material respects; (e) there are no limitations or restrictions on the rights of any Borrower or Guarantor to sell, transfer or otherwise assign the Prescription Files to any third party so long as such third party has the licenses required under applicable state law to operate a pharmacy and sell products subject to a prescription; (f) each Borrower and Guarantor assumes all responsibility and liability arising from or relating to the use and sale of prescriptions and the maintenance and use of the Prescription Files (but nothing contained herein shall be construed as the basis for any liability of any Borrower or Guarantor as to any third party); and (g) Borrowers and Guarantors shall keep the Prescription Files in good and marketable condition.

**15.6 Rolling Stock Covenants.** With respect to the Rolling Stock: (a) each Borrower and Guarantor shall at all times maintain records with respect to Rolling Stock reasonably satisfactory to Administrative Agent, keeping correct, detailed and accurate records describing the Rolling Stock, the quality and repair records with respect thereto, such Borrower's or Guarantor's cost therefor; (b) Borrowers and Guarantors shall conduct a physical count or inventory of the Rolling Stock at least once each year but at any time or times as Administrative Agent may request on or after an Event of Default, and promptly following such physical count or inventory shall supply Administrative Agent with a report in the form and with such specificity as may be satisfactory to Administrative Agent concerning such physical count; (c) Borrowers shall, at their expense, (i) not less than one (1) time in any twelve (12) month period, if Excess Availability at all times during such twelve (12) month period is greater than an amount equal to twenty (20%) percent of the Total Borrowing Base, (ii) not less than two (2) times in any twelve (12) month period, if Excess Availability at any time during such twelve (12) month period is less than or equal to an amount equal to twenty (20%) percent of the Total Borrowing Base and (iii) at any time or times as Administrative Agent may request on or after an Event of Default or at Administrative Agent's own expense, in each case, deliver or cause to be delivered to Administrative Agent written appraisals as to the Rolling Stock in form, scope and methodology reasonably acceptable to Administrative Agent and by an appraiser acceptable to Administrative Agent, addressed to Administrative Agent and Lenders and upon which Administrative Agent and Lenders are expressly permitted to rely, provided, that, unless an Event of Default exists or if Excess Availability at such time is less than thirty-five (35%) percent of the Total Borrowing Base, Administrative Agent, at its sole discretion after the request by Borrowers, may agree to defer for a period of six months (but not more than two times during the term of this Agreement and not for consecutive six month periods) the delivery of any such appraisal required hereunder, (d) Borrowers and Guarantors shall use, store and maintain the Rolling Stock with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws (including any Federal or state motor vehicles statutes, the requirements of the Federal Fair Labor Standards Act of 1938, as amended and all

rules, regulations and orders related thereto); and (e) each Borrower and Guarantor assumes all responsibility and liability arising from or relating to the use, sale or other disposition of the Rolling Stock.

**15.7 Eligible Life Insurance Policies.** With respect to the Eligible Life Insurance Policies: (a) Borrowers shall at all times maintain and preserve each Eligible Life Insurance Policy in accordance with the terms and conditions of the Collateral Assignment of Life Insurance for such Eligible Life Insurance Policy ; and (b) upon Administration Agent's request,

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Borrowers shall use commercially reasonable efforts to cause the Life Insurance Company to furnish to Administrative Agent, at Borrowers' expense, a certification as to any Eligible Life Insurance Policy regarding, among other things, (i) the amount of the Cash Surrender Value, (ii) the status of the payment of the Life Insurance Policy premiums, and (iii) the validity and effectiveness of such Life Insurance Policy.

**15.8 Power of Attorney.** Each Borrower and Guarantor hereby irrevocably designates and appoints Administrative Agent (and all persons designated by Administrative Agent) as such Borrower's and Guarantor's true and lawful attorney-in-fact, and authorizes Administrative Agent, in such Borrower's, Guarantor's or Administrative Agent's name, to: (a) at any time on and after an Event of Default exists or has occurred and is continuing (i) demand payment on Receivables or other Collateral, (ii) enforce payment of Receivables by legal proceedings or otherwise, (iii) exercise all of such Borrower's or Guarantor's rights and remedies to collect any Receivable or other Collateral, (iv) sell or assign any Receivable upon such terms, for such amount and at such time or times as the Administrative Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Receivable, (vii) prepare, file and sign such Borrower's or Guarantor's name on any proof of claim in bankruptcy or other similar document against an Account Debtor or other obligor in respect of any Receivables or other Collateral, (viii) notify the post office authorities to change the address for delivery of remittances from Account Debtors or other obligors in respect of Receivables or other proceeds of Collateral to an address designated by Administrative Agent, and open and dispose of all mail addressed to such Borrower or Guarantor and handle and store all mail relating to the Collateral; and (ix) do all acts and things which are necessary, in Administrative Agent's determination, to fulfill such Borrower's or Guarantor's obligations under this Agreement and the other Financing Agreements and (b) at all times that Administrative Agent has exercised its right to instruct the depository banks at which Blocked Accounts are maintained to transfer funds to the Administrative Agent Payment Account as provided in Section 6.3 hereto (or at any time that any item of payment referred to below may be received by Administrative Agent or any Lender), to (i) take control in any manner of any item of payment in respect of Receivables or constituting Collateral or otherwise received in or for deposit in the Blocked Accounts or otherwise received by Administrative Agent or any Lender, (ii) have access to any lockbox or postal box into which remittances from Account Debtors or other obligors in respect of Receivables or other proceeds of Collateral are sent or received, (iii) endorse such Borrower's or Guarantor's name upon any items of payment in respect of Receivables or constituting Collateral or otherwise received by Administrative Agent and any Lender and deposit the same in Administrative Agent's account for application to the Obligations, and (c) at any time to (i) endorse such Borrower's or Guarantor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Receivable or any goods pertaining thereto or any other Collateral, including any warehouse or other receipts, or bills of lading and other negotiable or non-negotiable documents, (ii) clear

Inventory the purchase of which was financed with Letter of Credit Accommodations through U.S. Customs or foreign export control authorities in such Borrower's or Guarantor's name, Administrative Agent's name or the name of Administrative Agent's designee, and to sign and deliver to customs officials powers of attorney in such Borrower's or Guarantor's name for such purpose, and to complete in such Borrower's or Guarantor's or Administrative Agent's name, any order, sale or transaction, obtain the necessary documents in connection therewith and collect the proceeds thereof, and (iii) sign

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such Borrower's or Guarantor's name on any verification of Receivables and notices thereof to Account Debtors or any secondary obligors or other obligors in respect thereof. Each Borrower and Guarantor hereby releases Administrative Agent and Lenders and their respective officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except to the extent resulting from Administrative Agent's or any Lender's own gross negligence or wilful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

**15.9 Right to Cure.** Administrative Agent may, at its option, upon notice to Lead Borrower, (a) cure any default by any Borrower or Guarantor under any material agreement with a third party that affects the Collateral, its value or the ability of Administrative Agent to collect, sell or otherwise dispose of the Collateral or the rights and remedies of Administrative Agent or any Lender therein or the ability of any Borrower or Guarantor to perform its obligations hereunder or under any of the other Financing Agreements, (b) pay or bond on appeal any judgment entered against any Borrower or Guarantor, (c) discharge taxes, liens, security interests or other encumbrances at any time levied on or existing with respect to the Collateral and pay any amount, incur any expense or perform any act which, in Administrative Agent's good faith judgment, is necessary or appropriate to preserve, protect, insure or maintain the Collateral and the rights of Administrative Agent and Lenders with respect thereto. Administrative Agent may add any amounts so expended to the Obligations and charge any Borrower's account therefor, such amounts to be repayable by Borrowers on demand. Administrative Agent and Lenders shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of any Borrower or Guarantor. Any payment made or other action taken by Administrative Agent or any Lender under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.

**15.10 Access to Premises.** From time to time as requested by Administrative Agent, at the cost and expense of Borrowers, (a) Administrative Agent or its designee shall have complete access to all of each Borrower's and Guarantor's premises during normal business hours and after notice to Lead Borrower, or at any time and without notice to Lead Borrower if an Event of Default exists or has occurred and is continuing, for the purposes of inspecting, verifying and auditing the Collateral and all of each Borrower's and Guarantor's books and records, including the Records (and at any time an Event of Default exists or has occurred and is continuing, a representative of one Lender may accompany Administrative Agent or its designee), and (b) each Borrower and Guarantor shall promptly furnish to Administrative Agent such copies of such books and records or extracts therefrom as Administrative Agent may request, and Administrative Agent or any Lender or Administrative Agent's designee may use during normal business hours such of any Borrower's and Guarantor's personnel, equipment, supplies and premises as may be reasonably necessary for the foregoing and if an

Event of Default exists or has occurred and is continuing for the collection of Receivables and realization of other Collateral. Administrative Agent shall not conduct more than (i) one (1) field examination with respect to the Collateral in any twelve (12) month period at the expense of Borrowers so long as Excess Availability shall be greater than or equal to the amount equal to twenty (20%) percent of the Total Borrowing Base, and (ii) two (2) field examinations with respect to the Collateral in

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any twelve (12) month period at the expense of Borrowers, in the event that Excess Availability shall be less than the amount equal to twenty (20%) percent of the Total Borrowing Base at any time during any twelve (12) month period, ~~except, that,~~ (A) at any time after an Event of Default shall exist or have occurred and be continuing, Administrative Agent may conduct, at the expense of Borrowers, such other field examinations as Administrative Agent may require, (B) Administrative Agent may conduct at any time, at its own expense, such other field examinations as Administrative Agent may require and (C) unless an Event of Default exists or if Excess Availability at such time is less than thirty-five (35%) percent of the Total Borrowing Base. Administrative Agent, at its sole discretion after the request by Borrowers, may agree to defer for a period of six months (but not more than two times during the term of this Agreement and not for consecutive six month periods) the commencement of any such field examination to be conducted hereunder.

## **SECTION 16. REPRESENTATIONS AND WARRANTIES**

Each Borrower and Guarantor hereby represents and warrants to Administrative Agent and Lenders the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the making of Loans and providing Letter of Credit Accommodations to Borrowers:

**16.1 Corporate Existence, Power and Authority.** Each Borrower and Guarantor is a corporation or limited liability company duly organized and in good standing under the laws of its state of organization and is duly qualified as a foreign corporation or limited liability company and in good standing in all states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary, except for those jurisdictions in which the failure to so qualify would not have a Material Adverse Effect. The execution, delivery and performance of this Agreement, the other Financing Agreements and the transactions contemplated hereunder and thereunder (a) are all within each Borrower's and Guarantor's corporate or limited liability company powers, (b) have been duly authorized, (c) are not in contravention of law or the terms of any Borrower's or Guarantor's certificate or articles of incorporation, by-laws, or other organizational documentation, or any Material Agreement or other material undertaking to which any Borrower or Guarantor is a party or by which any Borrower or Guarantor or its property are bound and (d) will not result in the creation or imposition of, or require or give rise to any obligation to grant, any lien, security interest, charge or other encumbrance upon any property of any Borrower or Guarantor, except in favor of Administrative Agent. This Agreement and the other Financing Agreements to which any Borrower or Guarantor is a party constitute legal, valid and binding obligations of such Borrower and Guarantor enforceable in accordance with their respective terms, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

**16.2 Name; State of Organization; Chief Executive Office; Collateral Locations.**

(a) The exact legal name as of the date of Amendment No. 4 of each Borrower and Guarantor is as set forth on the signature page of this Agreement and in the Information

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Certificate. No Borrower or Guarantor has, during the five years prior to the date of this Agreement, been known by or used any other corporate or fictitious name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property or assets out of the ordinary course of business, except as set forth in the Information Certificate.

(b) Each Borrower and Guarantor is as of the date of Amendment No. 4 an organization of the type and organized in the jurisdiction set forth in the Information Certificate. The Information Certificate accurately sets forth the organizational identification number of each Borrower and Guarantor or accurately states that such Borrower or Guarantor has none and accurately sets forth the federal employer identification number of each Borrower and Guarantor, in each case, as of the date of Amendment No. 4.

(c) The chief executive office and mailing address of each Borrower and Guarantor and each Borrower's and Guarantor's Records concerning Accounts are located only at the address identified as such in Schedule 8.2 to the Information Certificate and its only other places of business and the only other locations of Collateral not in transit to the extent permitted herein, if any, are the addresses set forth in Schedule 8.2 to the Information Certificate, subject to the rights of any Borrower or Guarantor to establish new locations in accordance with Section 9.2 below. The Information Certificate correctly identifies any of such locations which as of the date of Amendment No. 4 are not owned by a Borrower or Guarantor and sets forth the owners and/or operators thereof.

16.3 Financial Statements; No Material Adverse Change. All financial statements relating to any Borrower or Guarantor which have been or may hereafter be delivered by any Borrower or Guarantor to Administrative Agent and Lenders have been prepared in accordance with GAAP (except as to any interim financial statements, to the extent such statements are subject to normal year-end adjustments and do not include any notes) and fairly present in all material respects the financial condition and the results of operation of such Borrower and Guarantor at the dates and for the periods set forth therein. Except as disclosed in any interim financial statements furnished by Borrowers and Guarantors to Administrative Agent prior to the date of this Agreement, as of the Effective Date, there has been no act, condition or event which has had or is reasonably likely to have a Material Adverse Effect since the date of the most recent audited financial statements of any Borrower or Guarantor furnished by any Borrower or Guarantor to Administrative Agent prior to the date of this Agreement.

16.4 Priority of Liens; Title to Properties. The security interests and liens granted to Administrative Agent under this Agreement and the other Financing Agreements constitute a valid perfected first priority (subject to Section 4.1(e)) security interest in all of the Collateral, subject only to the liens indicated on Schedule 8.4 to the Information Certificate and the other liens permitted under Section 9.8 hereof. Each Borrower and Guarantor has good and marketable fee simple title to or valid leasehold interests in all of its Real Property and good, valid and merchantable title to all of its other properties and assets subject to no liens, mortgages, pledges, security interests, encumbrances or charges of any kind, except those granted to Administrative Agent and such others as are specifically listed on Schedule 8.4 to the Information Certificate or permitted under Section 9.8 hereof.

**16.5 Tax Returns.** Each Borrower and Guarantor has filed, or caused to be filed, in a timely manner all material tax returns, reports and declarations which are required to be filed by it. All information in such tax returns, reports and declarations is complete and accurate in all material respects. Each Borrower and Guarantor has paid or caused to be paid all material taxes due and payable or claimed due and payable in any assessment received by it, except taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Borrower or Guarantor and with respect to which adequate reserves have been set aside on its books. Adequate provision has been made for the payment of all material accrued and unpaid Federal, State, county, local, foreign and other taxes whether or not yet due and payable and whether or not disputed.

**16.6 Litigation.** Except as set forth on Schedule 8.6 to the Information Certificate, (a) there is no investigation by any Governmental Authority pending, or to the best of any Borrower's or Guarantor's knowledge threatened, against or affecting any Borrower or Guarantor, or its or their assets or business and (b) there is no action, suit, proceeding or claim by any Person pending, or to the best of any Borrower's or Guarantor's knowledge threatened, against any Borrower or Guarantor or its or their assets or goodwill, or against or affecting any transactions contemplated by this Agreement, in each case, which if adversely determined against such Borrower or Guarantor has or could reasonably be expected to have a Material Adverse Effect.

**16.7 Compliance with Other Agreements and Applicable Laws.**

(a) Borrowers and Guarantors are not in default in any respect under, or in violation in any respect of the terms of, any agreement, contract, instrument, lease or other commitment to which it is a party or by which it or any of its assets are bound where such default or violation has or could reasonably be expected to have a Material Adverse Effect. Borrowers and Guarantors are in compliance with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority relating to their respective businesses, including, without limitation, those set forth in or promulgated pursuant to the Occupational Safety and Health Act of 1970, as amended, the Fair Labor Standards Act of 1938, as amended, ERISA, the Code, as amended, and the rules and regulations thereunder, and all Environmental Laws where the failure to so comply has or could reasonably be expected to have a Material Adverse Effect.

(b) Borrowers and Guarantors have obtained all permits, licenses, approvals, consents, certificates, orders or authorizations of any Governmental Authority required for the lawful conduct of its business (the "Permits") where the failure to have such Permits has or could reasonably be expected to have a Material Adverse Effect. All of the material Permits are valid and subsisting and in full force and effect. Except as set forth on Schedule 8.8 of the Information Certificate, there are no actions, claims or proceedings pending or to the best of any Borrower's or Guarantor's knowledge, threatened that seek the revocation, cancellation, suspension or modification of any of the material Permits.

**16.8 Environmental Compliance.**

(a) Except as set forth on Schedule 8.8 to the Information Certificate, Borrowers, Guarantors and any Subsidiary of any Borrower or Guarantor have not generated,

used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner that violates any applicable Environmental Law or Permit where such violation has or could reasonably be expected to have a Material Adverse Effect.

(b) Except as set forth on Schedule 8.8 to the Information Certificate, there has been no, and to the best of any Borrower's or Guarantor's knowledge there is no pending or threatened, investigation by any Governmental Authority or any proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other person with respect to any non-compliance with or violation of the requirements of any Environmental Law by any Borrower or Guarantor and any Subsidiary of any Borrower or Guarantor or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which has or could reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth on Schedule 8.8 to the Information Certificate, as of the date of Amendment No. 4, Borrowers, Guarantors and their Subsidiaries have no material liability (contingent or otherwise) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials.

#### 16.9 Employee Benefits.

(a) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or State law; (ii) each Borrower and its ERISA Affiliates have made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan; (iii) no Plan has been terminated so as to incur any material liability to the Pension Benefit Guaranty Corporation and there has been no occurrence of a reportable event or any other event or condition which presents a material risk of termination by the Pension Benefit Guaranty Corporation of any such Plan that is a single employer plan, which termination could result in any material liability to the Pension Benefit Guaranty Corporation; and (iv) there does not exist any accumulated funding deficiency, whether or not waived, with respect to any such Plan.

(b) Except as set forth on Schedule 8.9, as of the date of Amendment No. 4 each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service and to the best of any Borrower's or Guarantor's knowledge, nothing has occurred which would cause the loss of such qualification.

(c) Except as set forth on Schedule 8.9, (i) as of the date of Amendment No. 4, there are no pending, or to the best of any Borrower's or Guarantor's knowledge, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan and (ii) there has been no non-exempt prohibited transaction or violation of the fiduciary

responsibility rules with respect to any Plan that has in either case resulted or could reasonably be expected to result in a Material Adverse Effect.

(d) Except as set forth on Schedule 8.9 or except as has not or could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) the current value of each Plan's assets (determined in accordance with the assumptions used for funding such Plan pursuant to Section 412 of the Code) are not less than such Plan's liabilities under Section 4001(a)(16) of ERISA (provided, that, any underfunding set forth on Schedule 8.9 has not, as of the date of Amendment No. 4, given rise to the requirement that any additional minimum funding payments be made except as disclosed therein); (iii) each Borrower and Guarantor, and their ERISA Affiliates, have not incurred and do not reasonably expect to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) each Borrower and Guarantor, and their ERISA Affiliates, have not incurred and do not reasonably expect to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) each Borrower and Guarantor, and their ERISA Affiliates, have not engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA.

**16.10 Bank Accounts.** All of the deposit accounts, investment accounts or other accounts in the name of or used by any Borrower or Guarantor maintained at any bank or other financial institution are set forth on Schedule 8.10 to the Information Certificate, subject to the right of each Borrower and Guarantor to establish new accounts in accordance with Section 5.2 hereof.

**16.11 Intellectual Property.**

(a) Each Borrower and Guarantor owns or licenses or otherwise has the right to use all Intellectual Property reasonably necessary for the operation of its business as presently conducted. As of the date of Amendment No. 4, Borrowers and Guarantors do not have any Intellectual Property registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those described in Schedule 8.11 to the Information Certificate and has not granted any licenses with respect thereto other than as set forth in Schedule 8.11 to the Information Certificate. No event has occurred which permits or would permit after notice or passage of time or both, the revocation, suspension or termination of such rights where any such event has or could reasonably be expected to have a Material Adverse Effect.

(b) To the best of any Borrower's or Guarantor's knowledge, no slogan or other advertising device, product, process, method, substance or other Intellectual Property or goods bearing or using any Intellectual Property presently contemplated to be sold by or employed by any Borrower or Guarantor infringes in any material respect as to any patent, trademark, servicemark, tradename, copyright, license or other Intellectual Property owned by any other Person presently and no claim or litigation is pending or, to the best of any Borrower's or Guarantor's knowledge, threatened against or affecting any Borrower or Guarantor contesting its

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right to sell or use any such Intellectual Property where any such infringements, claims or litigation have or could reasonably be expected to have a Material Adverse Effect. Schedule 8.11 to the Information Certificate sets forth all of the agreements or other

arrangements of each Borrower and Guarantor pursuant to which such Borrower or Guarantor has a license or other right to use any trademarks, logos, designs, representations or other Intellectual Property owned by another person as in effect on the date of Amendment No. 4 and the dates of the expiration of such agreements or other arrangements of such Borrower or Guarantor as in effect on the date of Amendment No. 4 (collectively, together with such agreements or other arrangements as may be entered into by any Borrower or Guarantor after the Effective Date, collectively, the "License Agreements" and individually, a "License Agreement"). No trademark, servicemark, copyright or other Intellectual Property at any time used by any Borrower or Guarantor which is owned by another person, or owned by such Borrower or Guarantor subject to any security interest, lien, collateral assignment, pledge or other encumbrance in favor of any person other than Administrative Agent, is affixed to any Eligible Inventory, except (a) to the extent permitted under the term of the license agreements listed on Schedule 8.11 to the Information Certificate and (b) to the extent the sale of Inventory to which such Intellectual Property is affixed is permitted to be sold by such Borrower or Guarantor under applicable law (including the United States Copyright Act of 1976).

#### 16.12 Subsidiaries; Affiliates; Capitalization; Solvency.

(a) Each Borrower and Guarantor does not have any direct or indirect Subsidiaries or Affiliates and is not engaged in any joint venture or partnership except as set forth in Schedule 8.12 to the Information Certificate and except to the extent permitted after the Effective Date under Section 9.10 hereof.

(b) Each Borrower and Guarantor is the record and beneficial owner of all of the issued and outstanding shares of Capital Stock of each of the Subsidiaries listed on Schedule 8.12 to the Information Certificate as being owned by such Borrower or Guarantor and as may be permitted after the Effective Date under Section 9.10 hereof.

(c) The issued and outstanding shares of Capital Stock of each Borrower (other than Parent) and Guarantor are directly and beneficially owned and held by the persons indicated in the Information Certificate, and in each case all of such shares of Borrowers (other than Parent) and Guarantors have been duly authorized and are fully paid and non-assessable, free and clear of all claims, liens, pledges and encumbrances of any kind, except as disclosed in Schedule 8.12 of the Information Certificate or as otherwise disclosed in Administrative Agent in writing prior to the Effective Date.

(d) Borrowers and Guarantors (taken as a whole) are and will continue to be Solvent after the creation of the Obligations, the security interests of Administrative Agent and the other transactions contemplated hereunder.

#### 16.13 Labor Disputes.

(a) Set forth on Schedule 8.13 to the Information Certificate is a list (including dates of termination) of all collective bargaining or similar agreements between or applicable to

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each Borrower and Guarantor and any union, labor organization or other bargaining agent in respect of the employees of any Borrower or Guarantor on the date of Amendment No. 4.

(b) There is no significant unfair labor practice complaint pending against any Borrower or Guarantor or, to the best of any Borrower's or Guarantor's knowledge, threatened against it, before the National Labor Relations Board, and no significant grievance or significant arbitration proceeding arising out of or under any collective

bargaining agreement is pending on the date of Amendment No. 4 against any Borrower or Guarantor or, to best of any Borrower's or Guarantor's knowledge, threatened against it which has or could reasonably be expected to have a Material Adverse Effect, and no significant strike, labor dispute, slowdown or stoppage is pending against any Borrower or Guarantor or, to the best of any Borrower's or Guarantor's knowledge, threatened against any Borrower or Guarantor which has or could reasonably be expected to have a Material Adverse Effect.

**16.14 Restrictions on Subsidiaries.** Except for restrictions contained in this Agreement, in the Senior Note Indenture (as in effect on December 6, 2012) or any other agreement with respect to Indebtedness of any Borrower or Guarantor permitted hereunder as in effect on the date of Amendment No. 4, there are no contractual or consensual restrictions on any Borrower or Guarantor or any of its Subsidiaries which prohibit or otherwise restrict (a) the transfer of cash or other assets (i) between any Borrower or Guarantor and any of its or their Subsidiaries or (ii) between any Subsidiaries of any Borrower or Guarantor or (b) the ability of any Borrower or Guarantor or any of its or their Subsidiaries to incur Indebtedness or grant security interests to Administrative Agent or any Lender in the Collateral.

**16.15 Material Contracts.** Schedule 8.15 to the Information Certificate sets forth all Material Contracts to which any Borrower or Guarantor is a party or is bound as of the date of Amendment No. 4. Borrowers and Guarantors have delivered true, correct and complete copies of such Material Contracts to Administrative Agent on or before the date of Amendment No. 4. Borrowers and Guarantors are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party to terminate any Material Contract.

**16.16 Credit Card Agreements.** Set forth in Schedule 8.16 hereto is a correct and complete list of all of the Credit Card Agreements and all other agreements, documents and instruments existing as of the date of Amendment No. 4 between or among any Borrower, any of its Affiliates, the Credit Card Issuers, the Credit Card Processors and any of their Affiliates. The Credit Card Agreements constitute all of such agreements necessary for each Borrower to operate its business as presently conducted with respect to credit cards and debit cards and no Receivables of any Borrower arise from purchases by customers of Inventory with credit cards or debit cards, other than those which are issued by Credit Card Issuers with whom such Borrower has entered into one of the Credit Card Agreements set forth on Schedule 8.16 hereto or with whom Borrower has entered into a Credit Card Agreement in accordance with Section 9.15 hereof. Each of the Credit Card Agreements constitutes the legal, valid and binding obligations of the Borrower that is party thereto and to the best of each Borrower's and Guarantor's knowledge, the other parties thereto, enforceable in accordance with their respective terms and is in full force and effect. No default or event of default, or act, condition or event which after notice or passage of time or both, would constitute a default or an event of default under any of

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the Credit Card Agreements exists or has occurred. Each Borrower and the other parties thereto have complied in all material respects with all of the terms and conditions of the Credit Card Agreements to the extent necessary for such Borrower to be entitled to receive all payments thereunder. Borrowers have delivered, or caused to be delivered to Administrative Agent, true, correct and complete copies of all of the Credit Card Agreements in effect as of the date of Amendment No. 4.

**16.17 HIPAA Compliance.**

(a) To the extent that and for so long as any Borrower or Guarantor is a “covered entity” within the meaning of HIPAA, such Borrower or Guarantor (i) has undertaken or will promptly undertake all appropriate surveys, audits, inventories, reviews, analyses and/or assessments (including any necessary risk assessments) of all areas of its business and operations required by HIPAA; (ii) has developed, and to the extent becoming a “covered entity” after the Effective Date, will promptly develop within the time period required under the applicable statutes and regulations, an appropriate plan and time line for becoming HIPAA Compliant (a “HIPAA Compliance Plan”); and (iii) has implemented, and to the extent becoming a “covered entity” after the Effective Date, will promptly implement within the time period required under the applicable statutes and regulations, those provisions of such HIPAA Compliance Plan in all material respects necessary to ensure that such Borrower or Guarantor is or becomes HIPAA Compliant.

(b) For purposes hereof, “HIPAA Compliant” shall mean that a Borrower or Guarantor (i) is or will be in compliance in all material respects with each of the applicable requirements of the so-called “Administrative Simplification” provisions of HIPAA on and as of each date that any part thereof, or any final rule or regulation thereunder, becomes effective in accordance with its or their terms, as the case may be (each such date, a “HIPAA Compliance Date”) and (ii) is not and could not reasonably be expected to become, as of any date following any such HIPAA Compliance Date, the subject of any civil or criminal penalty, process, claim, action or proceeding, or any administrative or other regulatory review, survey, process or proceeding (other than routine surveys or reviews conducted by any government health plan or other accreditation entity) that could result in any of the foregoing or that has or could reasonably be expected to have a Material Adverse Effect.

(c) Schedule 8.17 hereto sets forth a complete list of all “business associate agreements” (as such term is defined in HIPAA) that any Borrower or Guarantor has entered into with any person as of the date of Amendment No. 4.

**16.18 Compliance with Health Care Laws.** Without limiting the generality of Sections 8.7 or 8.17, or any other representation or warranty made herein or in any of the other Financing Agreements:

(a) Each Borrower and Guarantor is in compliance in all material respects with all applicable Health Care Laws, including all Medicare and Medicaid program rules and regulations applicable to them. Without limiting the generality of the foregoing, no Borrower or Guarantor has received written notice by a Governmental Authority of any violation of any provisions of the Medicare and Medicaid Anti-Fraud and Abuse or Anti-Kickback Amendments

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of the Social Security Act (presently codified in Section 1128(B)(b) of the Social Security Act) or the Medicare and Medicaid Patient and Program Protection Act of 1987.

(b) Each Borrower and Guarantor has maintained in all material respects all records required to be maintained by the Joint Commission on Accreditation of Healthcare Organizations, the Food and Drug Administration, Drug Enforcement Agency and State Boards of Pharmacy and the Federal and State Medicare and Medicaid programs as required by the Health Care Laws each Borrower and Guarantor and has all necessary permits, licenses, franchises, certificates and other approvals or authorizations of Governmental Authority as are required under applicable Health Care Laws.

(c) Each Borrower and Guarantor who is a Certified Medicare Provider or Certified Medicaid Provider has in a timely manner filed all requisite cost reports, claims and other reports required to be filed in connection with all Medicare and Medicaid programs due on or before the date of Amendment No. 4, all of which are complete and correct in all material respects. There are no known claims, actions or appeals pending before any Third Party Payor or Governmental Authority, including without limitation, any Fiscal Intermediary, the Provider Reimbursement Review Board or the Administrator of the Centers for Medicare and Medicaid Services, with respect to any Medicare or Medicaid cost reports or claims filed by any Borrower or Guarantor on or before the date of Amendment No. 4. To the best of each Borrower's and each Guarantor's knowledge, there currently exist no restrictions, deficiencies, required plans of correction actions or other such remedial measures with respect to Federal and State Medicare and Medicaid certifications or licensure.

(d) Schedule 8.18 hereto sets forth an accurate, complete and current list of all participation agreements of any Borrower or Guarantor with health maintenance organizations, insurance programs, preferred provider organizations and other Third Party Payors and all such agreements are in full force and effect and no material default exists thereunder.

**16.19 Interrelated Businesses.** Borrowers and Guarantors make up a related organization of various entities constituting an overall economic and business enterprise such that any benefit from the Loans or other financial accommodations hereunder received by any one of them benefits the others. Borrowers and Guarantors render services to or for the benefit of the other Borrowers and/or Guarantors purchase or sell and supply goods to or from or for the benefit of the others, make loans, advances and provide other financial accommodations to or for the benefit of the other Borrowers and Guarantors and provide administrative, marketing, payroll and management services to or for the benefit of the other Borrowers and Guarantors, as the case may be. Borrowers and Guarantors have the same chief executive office, certain centralized accounting and legal services, certain common officers and directors and generally do not provide consolidating financial statements to creditors.

**16.20 Notices from Farm Products Sellers, etc.**

(a) Each Borrower has not, within the one (1) year period prior to the date of Amendment No. 4, received any written notice pursuant to the applicable provisions of the PSA, PACA, the Food Security Act, the UCC or any other applicable local laws from (i) any Farm Products Seller or (ii) any lender to any Farm Products Seller or any other Person with a security

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interest in the assets of any Farm Products Seller or (iii) the Secretary of State (or equivalent official) or other Governmental Authority of any State, Commonwealth or political subdivision thereof in which any Farm Products purchased by such Borrower are produced, in any case advising or notifying such Borrower of the intention of such Farm Products Seller or other Person to preserve the benefits of any trust applicable to any assets of any Borrower established in favor of such Farm Products Seller or other Person under the provisions of any law or claiming a security interest in or lien upon or other claim or encumbrance with respect to any perishable agricultural commodity or any other Farm Products which may be or have been purchased by a Borrower or any related or other assets of such Borrower (all of the foregoing, together with any such notices as any Borrower may at any time hereafter receive, collectively, the "Food Security Act Notices").

(b) No Borrower is a “live poultry dealer” (as such term is defined in the PSA) or otherwise purchases or deals in live poultry of any type whatsoever. Borrowers and Guarantors do not purchase livestock pursuant to cash sales as such term is defined in the PSA. Each Borrower is not engaged in, and shall not engage in, raising, cultivating, propagating, fattening, grazing or any other farming, livestock or aquacultural operations.

#### 16.21 Pharmaceutical Laws.

(a) Borrowers and Guarantors have obtained all permits, licenses and other authorizations which are required with respect to the ownership and operations of their business under any Pharmaceutical Law, except where the failure to obtain such permits, licenses or other authorizations would not reasonably be expected to have a Material Adverse Effect.

(b) Borrowers and Guarantors are in compliance with all terms and conditions of all such permits, licenses, orders and authorizations, and are also in compliance with all Pharmaceutical Laws, including all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Pharmaceutical Laws, except where the failure to comply with such terms, conditions or laws would not reasonably be expected to have a Material Adverse Effect.

(c) No Borrower or Guarantor has any liabilities, claims against it or presently outstanding notices imposed or based upon any provision of any Pharmaceutical Law, except for such liabilities, claims, citations or notices which individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

16.22 No Default. No Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Financing Agreements.

16.23 Insurance. Borrower and Guarantors and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of any Borrower or Guarantor, in such amounts, with such retentions and/or self-insured deductibles and covering such risks (including, without limitation, workmen’s compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Borrowers and Guarantors or

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the applicable Subsidiary operates. Schedule 8.23 sets forth a description of all workmen’s compensation, public liability, business interruption, property damage and other material insurance policies maintained by or on behalf of Borrowers and Guarantors as of the date of Amendment No. 4. Each insurance policy listed on Schedule 8.23 is in full force and effect.

#### 16.24 Margin Regulations; Investment Company Act.

(a) No Borrower or Guarantor is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock. None of the proceeds of the Loans or Letter of Credit Accommodations shall be used directly or indirectly for the purpose of purchasing or carrying any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock, for the purpose of

reducing or retiring any Indebtedness that was originally incurred to purchase or carry any Margin Stock, that might cause any of the Loans or Letter of Credit Accommodations to be considered a "purpose credit" within the meaning of Regulations T, U, or X issued by the FRB or for any other purpose that violates the provisions of Regulation T, U or X issued by the FRB.

(b) No Borrower or Guarantor, or any of their Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

16.25 Brokers. No broker or finder brought about the obtaining, making or closing of the Loans, and no Borrower or Guarantor or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

16.26 Customer and Trade Relations. There exists no termination or cancellation of, or any modification or change in the business relationship of any Borrower or Guarantor with any customers or suppliers which are, individually or in the aggregate, material to its operations, to the extent that such cancellation, modification or change would reasonably be expected to result in a Material Adverse Effect.

16.27 Casualty. Neither the businesses nor the properties of any Borrower or Guarantor or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

16.28 Nash-Finch Merger.

(a) Borrowers have delivered to Administrative Agent complete and correct copies of the Nash-Finch Merger Documents in effect as of the Effective Date, including all schedules and exhibits thereto. The execution, delivery and performance of each of the Nash-Finch Merger Documents has been duly authorized by all necessary action on the part of Borrowers. Each Nash-Finch Merger Document is the legal, valid and binding obligation of each Borrower, as applicable, enforceable against each Borrower in accordance with its terms, in each case, except (i) as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting generally the enforcement of creditors'

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rights and (ii) the availability of the remedy of specific performance or injunctive or other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(b) As of the Effective Date, the Nash-Finch Merger has been consummated in accordance with all applicable laws. As of the Effective Date, all requisite approvals by Governmental Authorities having jurisdiction over any Borrower or Guarantor with respect to the Nash-Finch Merger, have been obtained (including filings or approvals required under the Hart-Scott-Rodino Antitrust Improvements Act), to the extent the failure to obtain such approvals could reasonably be expected to be adverse to the interests of the Lenders in any material respect. As of the Effective Date, after giving effect to the transactions contemplated by the Nash-Finch Merger Documents, SSD is the owner of all of the Capital Stock of Nash-Finch free and clear of all liens and security interests, other than liens permitted under Section 9.8 herein.

**16.29 Designation of Senior Indebtedness.** All Obligations are designated as "Senior Indebtedness" under, and defined in, the Senior Note Indenture, and all supplemental indentures thereto.

**16.30 Senior Note Indenture.** The aggregate amount of the Loans (including Swing Line Loans) and the Letter of Credit Accommodations outstanding at any time do not exceed the amount that would give rise to a default or event of default under the Senior Note Indenture or which would give rise to the obligation of Parent or any of its Subsidiaries to grant a lien on any assets to secure the Senior Notes.

**16.31 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.** Neither any Borrower, any Guarantor nor any of their Subsidiaries is in violation of any Sanctions. Neither any Borrower, any Guarantor nor any of their Subsidiaries nor, to the knowledge of such Borrower or Guarantor, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each Borrower, each Guarantor and any of its or their respective Subsidiaries, and to the knowledge of each such Borrower and Guarantor, each director, officer, employee, agent and Affiliate of each such Borrower and Guarantor and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender, Bank Product Provider, or other individual or entity participating in any transaction).

**16.32 Patriot Act.** To the extent applicable, each Borrower and Guarantor is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR,

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Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act").

**16.33 Accuracy and Completeness of Information.** All information furnished by or on behalf of any Borrower or Guarantor in writing to Administrative Agent or any Lender in connection with this Agreement or any of the other Financing Agreements or any transaction contemplated hereby or thereby, including all information on the Information Certificate is true and correct in all material respects on the date as of which such information is dated or certified and does not omit any material fact necessary in order to make such information not misleading; provided, that, with respect to projected financial information, Borrowers and Guarantors represent only that such information is prepared in good faith based upon assumptions believed to be reasonable in light of the conditions existing at the time of delivery. The information included in the most recent Beneficial Ownership Certification delivered to Administrative Agent is true and correct in all respects.

**16.34 Survival of Warranties; Cumulative.** All representations and warranties contained in this Agreement or any of the other Financing Agreements shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to Administrative Agent and Lenders on the date of each additional borrowing or other credit accommodation hereunder (except to the extent that such representations and warranties expressly relate to an earlier date) and shall be conclusively presumed to have been relied on by Administrative Agent and Lenders regardless of any investigation made or information possessed by Administrative Agent or any Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which any Borrower or Guarantor shall now or hereafter give, or cause to be given, to Administrative Agent or any Lender.

**16.35 Affected Financial Institutions.** Neither any Borrower nor any Guarantor is an Affected Financial Institution.

## **SECTION 17. AFFIRMATIVE AND NEGATIVE COVENANTS**

### **17.1 Maintenance of Existence.**

(a) Each Borrower and Guarantor shall at all times (i) preserve, renew and keep in full force and effect its corporate or limited liability company existence and rights and franchises with respect thereto and (ii) maintain in full force and effect all licenses, trademarks, tradenames, approvals, authorizations, leases, contracts and Permits necessary to carry on the business as presently conducted or as conducted after the Effective Date, except as to any Borrower or Guarantor other than Parent as permitted in Section 9.7 hereto and except, as to clause (ii) only, where the failure to do so, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect.

(b) No Borrower or Guarantor shall change its name unless Administrative Agent shall have received not less than fifteen (15) days prior written notice from Lead Borrower of such proposed change in its corporate or limited liability company name, which notice shall

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accurately set forth the new name. Lead Borrower shall, within one (1) Business Day of such name change, deliver to Administrative Agent a copy of the amendment to the Certificate of Incorporation or Articles of Incorporation (or Certificate of Formation or other organizational document as applicable) of such Borrower or Guarantor providing for the name change certified by the Secretary of State of the jurisdiction of incorporation or organization of such Borrower or Guarantor as soon as it is available.

(c) No Borrower or Guarantor shall change its chief executive office or its mailing address or organizational identification number (or if it does not have one, shall not acquire one) unless Administrative Agent shall have received not less than thirty (30) days' prior written notice from Lead Borrower of such proposed change, which notice shall set forth such information with respect thereto as Administrative Agent may in good faith require and Administrative Agent shall have received such agreements as Administrative Agent may reasonably require in connection therewith. No Borrower or Guarantor shall change its type of organization, jurisdiction of organization or other legal structure, except as to any Borrower (other than Parent) to the extent permitted in Section 9.7 hereof and in any event after not less than thirty (30) days prior written notice to Administrative Agent.

**17.2 New Collateral Locations.** Each Borrower and Guarantor may only open any new location within the continental United States provided such Borrower or Guarantor

(a) gives Administrative Agent written notice of the opening of any such new location concurrently at the time of the delivery of the next Borrowing Base Certificate required to be delivered pursuant to Section 7.1(a)(i) hereof and (b) executes and delivers, or causes to be executed and delivered, to Administrative Agent such agreements, documents, and instruments as Administrative Agent may deem reasonably necessary or desirable to protect its interests in the Collateral at such location.

### 17.3 Compliance with Laws, Regulations, Etc.

(a) Each Borrower and Guarantor shall, and shall cause any Subsidiary to, at all times, comply in all material respects with all laws, rules, regulations, licenses, approvals, orders and other Permits applicable to it and duly observe all requirements of any foreign, Federal, State or local Governmental Authority, including ERISA, the Code, the Occupational Safety and Health Act of 1970, as amended, the Fair Labor Standards Act of 1938, as amended, all Health Care Laws and all Environmental Laws where the failure to so comply has or could reasonably be expected to have a Material Adverse Effect.

(b) Each Borrower and Guarantor shall give written notice to Administrative Agent promptly after any Borrower's or Guarantor's receipt of any notice of, or any Borrower's or Guarantor's otherwise obtaining knowledge of, (i) any release, spill or discharge, threatened or actual, of any Hazardous Material at or from its premises (whether or not owned by it) other than as permitted under any applicable Environmental Law or other occurrence that constitutes a violation in any material respect of any Environmental Law at any such premises or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice from or on behalf of any Governmental Authority with respect to: (A) any material non-compliance with or violation of any Environmental Law by any Borrower or Guarantor or (B) the release, spill or discharge, threatened or actual, of any Hazardous Material other than as permitted under any

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applicable Environmental Law. Upon the request of Administrative Agent, copies of all environmental surveys, audits, assessments, feasibility studies and results of remedial investigations shall be promptly furnished, or caused to be furnished, by such Borrower or Guarantor to Administrative Agent. Each Borrower and Guarantor shall take prompt action to respond to any material non-compliance with any of the Environmental Laws and shall keep Administrative Agent reasonably informed regarding the status of such response; provided, that, no Borrower or Guarantor shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings diligently pursued and available to such Borrower or Guarantor and with respect to which adequate reserves have been set aside on its books in accordance with GAAP.

(c) Without limiting the generality of the foregoing, whenever Administrative Agent reasonably determines that there is material non-compliance, or any condition that requires any action by or on behalf of any Borrower or Guarantor in order to avoid any material non-compliance, with any Environmental Law, Borrowers shall, at Administrative Agent's request and Borrowers' expense: (i) cause an independent environmental engineer reasonably acceptable to Administrative Agent to conduct such tests of the site where material non-compliance or alleged material non-compliance with such Environmental Laws has occurred as to such material non-compliance and prepare and deliver to Administrative Agent a report as to such material non-compliance setting forth the results of such tests, a proposed plan for responding to

any environmental problems described therein, and an estimate of the costs thereof and (ii) provide to Administrative Agent a supplemental report of such engineer whenever the scope of such material non-compliance, or such Borrower's or Guarantor's response thereto or the estimated costs thereof, shall change in any material respect.

(d) Each Borrower and Guarantor shall indemnify and hold harmless Administrative Agent and Lenders and their respective directors, officers, employees, agents, invitees, representatives, successors and assigns, from and against any and all losses, claims, damages, liabilities, and documented out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) directly or indirectly arising out of or attributable to the use, generation, manufacture, reproduction, storage, release, threatened release, spill, discharge, disposal or presence of a Hazardous Material, including the costs of any required or necessary repair, cleanup or other remedial work with respect to any property of any Borrower or Guarantor and the preparation and implementation of any closure, remedial or other required plans. All representations, warranties, covenants and indemnifications in this Section 9.3 shall survive the payment of the Obligations and the termination of this Agreement.

17.4 Payment of Taxes and Claims. Each Borrower and Guarantor shall, and shall cause any Subsidiary to, duly pay and discharge when due all material taxes, assessments, contributions and governmental charges upon or against it or its properties or assets, except for taxes, assessments, contributions and governmental charges the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Borrower, Guarantor or Subsidiary, as the case may be, and with respect to which adequate reserves have been set aside on its books and Administrative Agent may, at its option, establish any Reserves in respect thereof to the extent that such taxes give rise to a security interest, lien or

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other claim that is pari passu or has priority over the security interests of Administrative Agent or that would otherwise impair the ability of Administrative Agent to realize upon the Collateral.

#### 17.5 Insurance.

(a) Each Borrower and Guarantor shall, and shall cause any Subsidiary to, at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by corporations of established reputation engaged in the same or similar businesses and similarly situated. Said policies of insurance shall be reasonably satisfactory to Administrative Agent and each Lender as to form, amount and insurer. Borrowers and Guarantors shall furnish certificates, policies or endorsements to Administrative Agent as Administrative Agent shall reasonably require as proof of such insurance, and, if any Borrower or Guarantor fails to do so, Administrative Agent is authorized, but not required, to obtain such insurance at the expense of Borrowers. All policies shall provide for at least thirty (30) days prior written notice to Administrative Agent of any cancellation or reduction of coverage and that Administrative Agent may act as attorney for each Borrower and Guarantor in obtaining (if any Borrower or Guarantor fails to do so), and at any time an Event of Default exists or has occurred and is continuing, adjusting, settling, amending and canceling such insurance. Borrowers and Guarantors shall cause Administrative Agent to be named as a loss payee and an additional insured (but without any liability for any premiums) under such insurance policies and Borrowers and Guarantors shall obtain non-contributory lender's loss payable endorsements to all insurance policies in form and substance satisfactory to Administrative Agent. Such lender's loss payable

endorsements shall specify that the proceeds of such insurance shall be payable to Administrative Agent as its interests may appear and further specify that Administrative Agent and Lenders shall be paid regardless of any act or omission by any Borrower, Guarantor or any of its or their Affiliates. Without limiting any other rights of Administrative Agent or Lenders, any insurance proceeds received by Administrative Agent at any time may be applied to payment of the Obligations, whether or not then due, in any order and in such manner as Administrative Agent may determine. Upon application of such proceeds to the Loans, Loans may be available subject and pursuant to the terms hereof to be used for the costs of repair or replacement of the Collateral lost or damages resulting in the payment of such insurance proceeds.

(b) If any portion of any Collateral is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a "flood hazard area" with respect to which flood insurance has been made available under any of the Flood Insurance Laws, then Borrowers shall (i) with respect to such Collateral maintain with responsible and reputable insurance companies reasonably acceptable to Administrative Agent, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to Administrative Agent evidence of such compliance in form and substance reasonably acceptable to Administrative Agent and upon any Lender's request, Lead Borrower shall deliver such evidence of compliance to such Lender. All premiums on any of the insurance referred to in this Section 9.5(b) shall be paid when due by Borrowers and if requested by Administrative Agent, summaries of the policies shall be provided to Administrative Agent annually or as it may otherwise reasonably request. Without limiting the rights of Administrative Agent provided for above, if Borrowers

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fail to obtain or maintain any insurance required under the Flood Insurance Laws, Administrative Agent may obtain it at Borrowers' expense. By purchasing any of the insurance referred to in this Section 9.5(b), Administrative Agent shall not be deemed to have waived any Default or Event of Default arising from Borrowers' failure to maintain such insurance or pay any such premiums in respect thereof.

#### 17.6 Financial Statements and Other Information.

(a) Each Borrower and Guarantor shall, and shall cause any Subsidiary to, keep proper books and records of all financial transactions and matters involving the assets and the business of such Borrower, Guarantor and its Subsidiaries in accordance with GAAP. Borrowers and Guarantors shall furnish to Administrative Agent and Lenders within a reasonable time all such financial and other information as Administrative Agent shall reasonably request relating to the Collateral and the assets, business and operations of Borrowers and Guarantors, and Borrower shall notify the auditors and accountants of Borrowers and Guarantors that Administrative Agent is authorized to obtain such information directly from them; provided, that, so long as no Default or Event of Default shall exist or have occurred and be continuing, Administrative Agent shall not exercise its right under this Section 9.6 to contact the accountants and auditors directly to obtain information from them not relating to the Collateral without the prior approval of Lead Borrower, which approval shall not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, Borrowers and Guarantors shall furnish or cause to be furnished to Administrative Agent, the following:

(i) within thirty (30) days after the end of each fiscal four (4) week period (or forty-five (45) days after the end of each fiscal quarter), unaudited consolidated

financial statements (including in each case balance sheets, statements of income and loss, statements of cash flows, and statements of shareholders' equity), and unaudited consolidating statements of income and loss, all in reasonable detail and substantially in the form of Exhibit D-1 hereto, fairly presenting, in all material respects, the financial position and the results of the operations of Parent and its Subsidiaries as of the end of and through such fiscal four (4) week period, certified to be correct by the chief financial officer, corporate treasurer or vice president of finance of Parent, subject to normal year-end adjustments and no footnotes and accompanied by a compliance certificate substantially in the form of Exhibit E hereto, along with a schedule in a form reasonably satisfactory to Administrative Agent in good faith of the calculations used in determining, as of the end of such four (4) week period, whether Borrowers and Guarantors are in compliance with the covenant set forth in Section 9.18 of this Agreement for such fiscal four (4) week period, and

(ii) within ninety (90) days after the end of each fiscal year, audited consolidated financial statements of Parent and its Subsidiaries (including in each case balance sheets, statements of income and loss, statements of cash flows, and statements of shareholders' equity) and unaudited consolidating financial statements (including balance sheets and statements of income and loss), and the accompanying notes thereto, all in reasonable detail and substantially in the form of Exhibit D-2 hereto, fairly presenting in all material respects the financial position and the results of the operations of Parent and its Subsidiaries as of the end of and for such fiscal year, together with the unqualified opinion of independent certified public accountants with respect to the audited consolidated financial statements, which accountants

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shall be Deloitte & Touche LLP, another nationally recognized independent accounting firm selected by Borrowers and acceptable to Administrative Agent or a regional independent accounting firm selected by Borrowers and reasonably acceptable to Administrative Agent, that such audited consolidated financial statements have been prepared in accordance with GAAP, and present fairly in all material respects the results of operations and financial condition of Parent and its Subsidiaries as of the end of and for the fiscal year then ended. All references to a "fiscal four (4) week period" herein or otherwise in this Agreement or any of the other Financing Agreements shall mean such four (4) or five (5) week periods as calculated in accordance with the current accounting practices of Borrowers and Guarantors as of the Effective Date, and

(iii) at such time as available, but in no event later than sixty (60) days after the end of each fiscal year, projected consolidated financial statements and consolidating financial statements (including in each case, forecasted balance sheets and statements of income and loss, and statements of cash flow) of Parent and its Subsidiaries for the next fiscal year, all in reasonable detail, and in a format consistent with the projections delivered by Borrowers to Administrative Agent prior to the Effective Date (or otherwise in form reasonably acceptable to Administrative Agent), together with such supporting information as Administrative Agent may reasonably request. Such projected financial statements shall be prepared on a monthly basis for the next succeeding year. Such projections shall represent the reasonable best estimate by Borrowers and Guarantors of the future financial performance of Parent and its Subsidiaries for the periods set forth therein and shall have been prepared on the basis of the assumptions set forth therein which Borrowers and Guarantors believe are fair and reasonable as of the date of preparation in light of current and reasonably foreseeable business conditions (it being understood that actual results may differ from those set forth in such projected financial statements). Borrowers (or Lead Borrower on behalf of Borrowers) shall provide to Administrative Agent, as Administrative Agent may

require, updates with respect to such projections at any time a Default or Event of Default exists or has occurred and is continuing.

(b) Borrowers and Guarantors shall promptly notify Administrative Agent in writing of the details of (i) any loss, damage, investigation, action, suit, proceeding or claim relating to Collateral having a value of more than \$10,000,000, or which if adversely determined would result in a Material Adverse Effect, (ii) any order, judgment or decree in excess of \$15,000,000 that shall have been entered against any Borrower or Guarantor any of its or their properties or assets, (iv) any notification of a material violation of laws or regulations received by any Borrower or Guarantor, (v) any ERISA Event, and (vi) the occurrence of any Default or Event of Default.

(c) Borrowers and Guarantors shall promptly after the sending or filing thereof furnish or cause to be furnished to Administrative Agent copies of all reports which Parent sends to its stockholders generally and copies of all reports and registration statements which any Borrower or Guarantor files with the Securities and Exchange Commission, any national securities exchange or the National Association of Securities Dealers, Inc.

(d) Borrowers and Guarantors shall furnish or cause to be furnished to Administrative Agent such budgets, forecasts, projections and other information respecting the Collateral and the business of Borrowers and Guarantors, as Administrative Agent may, from time to time, reasonably request. Subject to the terms of Section 13.5 hereof, Administrative

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Agent is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of Borrowers and Guarantors to any court or other Governmental Authority or to any Lender or Participant or prospective Lender or Participant or any Affiliate of any Lender or Participant. Each Borrower and Guarantor hereby irrevocably authorizes and directs all accountants or auditors to deliver to Administrative Agent, at Borrowers' expense, upon Administrative Agent's request, copies of the financial statements of any Borrower and Guarantor and any reports or management letters prepared by such accountants or auditors on behalf of any Borrower or Guarantor and to disclose to Administrative Agent and Lenders upon Administrative Agent's request such information as they may have regarding the business of any Borrower and Guarantor. So long as no Default or Event of Default shall exist or have occurred and be continuing, Administrative Agent shall not exercise its right under this Section 9.6 to contact the accountants and auditors directly to obtain information from them not relating to the Collateral without the prior approval of Lead Borrower, which approval shall not be unreasonably withheld, conditioned or delayed. Any documents, schedules, invoices or other papers delivered to Administrative Agent or any Lender may be destroyed or otherwise disposed of by Administrative Agent or such Lender one (1) year after the same are delivered to Administrative Agent or such Lender, except as otherwise designated by Lead Borrower to Administrative Agent or such Lender in writing.

(e) Documents required to be delivered pursuant to Sections 9.6(a)(i) and (ii) or Section 9.6(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Parent or any other Borrower or Guarantor posts such documents, or provides a link thereto on Parent's or such other Borrower's or Guarantor's website on the Internet at the website address listed on Schedule 9.6(e); or (ii) on which such documents are posted on Parent's or any other Borrower's or Guarantor's behalf on an Internet or intranet website, if any, to

which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided, that: (i) Borrowers and Guarantors shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrowers and Guarantors to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) Lead Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrowers and Guarantors shall be required to provide paper copies of the Compliance Certificates to the Administrative Agent. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrowers and Guarantors with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

**17.7 Sale of Assets, Consolidation, Merger, Dissolution, Etc.** Each Borrower and Guarantor shall not, and shall not permit any Subsidiary to, directly or indirectly,

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(a) merge into or with or consolidate with any other Person or permit any other Person to merge into or with or consolidate with it ~~except that~~ Nash-Finch and SSD may merge pursuant to the Nash-Finch Merger as of the Effective Date and after the Effective Date, any Borrower may merge with and into or consolidate with any other Borrower and any Guarantor may merge with and into or consolidate with any Borrower, provided, that, each of the following conditions is satisfied as determined by Administrative Agent in good faith: (i) Administrative Agent shall have received not less than ten (10) Business Days' prior written notice of the intention of such Subsidiaries to so merge or consolidate, which notice shall set forth in reasonable detail satisfactory to Administrative Agent, the persons that are merging or consolidating, which person will be the surviving entity, the locations of the assets of the persons that are merging or consolidating, and the material agreements and documents relating to such merger or consolidation, (ii) Administrative Agent shall have received such other information with respect to such merger or consolidation as Administrative Agent may reasonably request, (iii) as of the effective date of the merger or consolidation and after giving effect thereto, no Default or Event of Default shall exist or have occurred, (iv) Administrative Agent shall have received, true, correct and complete copies of all agreements, documents and instruments relating to such merger or consolidation, including, but not limited to, the certificate or certificates of merger to be filed with each appropriate Secretary of State (with a copy as filed promptly after such filing), (v) the surviving corporation shall expressly confirm, ratify and assume the Obligations and the Financing Agreements to which it is a party in writing, in form and substance satisfactory to Administrative Agent, and Borrowers and Guarantors shall execute and deliver such other agreements, documents and instruments as Administrative Agent may request in connection therewith and (v) to the extent a Guarantor is merging with and into or consolidating with a Borrower, the Borrower shall be the surviving corporation;

(b) sell, issue, assign, lease, license, transfer, abandon or otherwise dispose of any Capital Stock, or Indebtedness owed to it, to any other Person or any of its assets to any other Person, ~~except for~~

(i) sales of Inventory in the ordinary course of business,

(ii) the sale or other disposition of Equipment (including worn-out or obsolete Equipment or Equipment no longer used or useful in the business of any Borrower or Guarantor) so long as (A) such sales or other dispositions do not involve Equipment having an aggregate fair market value in excess of \$10,000,000 for all such Equipment disposed of in any fiscal year of Borrowers or as Administrative Agent may otherwise agree and (B) Administrative Agent shall have received an updated Borrowing Base Certificate that gives effect to such sale or other disposition,

(iii) the issuance and sale by (A) Parent of its Capital Stock pursuant to and in accordance with the Nash-Finch Merger and (B) any Borrower or Guarantor of Capital Stock of such Borrower or Guarantor after the Effective Date; provided, that, (1) Administrative Agent shall have received not less than ten (10) Business Days' prior written notice of such issuance and sale by such Borrower or Guarantor, which notice shall specify the parties to whom such shares are to be sold, the terms of such sale, the total amount which it is anticipated will be realized from the issuance and sale of such stock and the net cash proceeds which it is anticipated will be received by such Borrower or Guarantor from such sale, (2) such Borrower or

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Guarantor shall not be required to pay any cash dividends or repurchase or redeem such Capital Stock or make any other payments in respect thereof, except as otherwise permitted in Section 9.11 hereof, (3) the terms of such Capital Stock, and the terms and conditions of the purchase and sale thereof, shall not include any terms that include any limitation on the right of any Borrower to request or receive Loans or Letter of Credit Accommodations or the right of any Borrower and Guarantor to amend or modify any of the terms and conditions of this Agreement or any of the other Financing Agreements or otherwise in any way relate to or affect the arrangements of Borrowers and Guarantors with Administrative Agent and Lenders or are more restrictive or burdensome to any Borrower or Guarantor than the terms of any Capital Stock in effect on the Effective Date, (4) except as Administrative Agent may otherwise agree in writing, all of the Net Proceeds of the sale and issuance of such Capital Stock shall be paid to Administrative Agent for application to the Obligations in accordance with Section 6.4 hereof and (E) as of the date of such issuance and sale and after giving effect thereto, no Default or Event of Default shall exist or have occurred,

(iv) the issuance of Capital Stock of any Borrower or Guarantor consisting of common stock pursuant to an employee stock option or grant or similar equity plan (including the Associate Stock Purchase Plan and the Restricted Stock Plan of Parent) or 401(k) plans of such Borrower or Guarantor for the benefit of its employees, directors and consultants, provided, that, in no event shall such Borrower or Guarantor be required to issue, or shall such Borrower or Guarantor issue, Capital Stock pursuant to such stock plans or 401(k) plans which would result in a Change of Control or other Event of Default,

(v) sales or other dispositions by any Borrower of assets in connection with the closing or sale of a retail store location of such Borrower in the ordinary course of such Borrower's business which consist of leasehold interests in the premises of such store (including the subleasing of the leasehold interest of such Borrower in such premises), the bulk sale of Inventory, Equipment and fixtures located at such premises to the purchaser of the leasehold interests and the books and records relating exclusively and directly to the operations of such store; provided, that, as to each and all such sales and closings, (A) on the date of, and after giving effect to, any such closing or sale, the number of retail store locations that had been operated by Borrowers that are closed or sold by Borrowers in any fiscal year shall not be greater than twenty (20%) percent of the number of retail stores operated by Borrowers as of the end of the

immediately preceding fiscal year, (B) on the date of, and after giving effect to any such closing or sale, the aggregate amount of the fair market value of all of such assets sold or otherwise disposed of in connection with all store closings, together with the aggregate fair market value of all Real Property, Prescription Files and Tax Stamps sold after the Effective Date (but excluding for this purpose sales of Non-Operating Assets and sales of Real Property that is acquired by any Borrower or Guarantor after the Effective Date permitted under the terms of this Agreement), shall not exceed ten (10%) percent of the total assets of Parent and its Subsidiaries (measured as of the date of Amendment No. 4 and excluding Non-Operating Assets and such Real Property acquired after the date of Amendment No. 4), (C) Administrative Agent shall have received not less than ten (10) Business Days prior written notice of such sale or closing, which notice shall set forth in reasonable detail satisfactory to Administrative Agent, the parties to such sale or other disposition, the assets to be sold or otherwise disposed of, the purchase price and the manner of payment thereof and such other information with respect

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thereto as Administrative Agent may request, (D) as of the date of such sale or other disposition and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, (E) such sale shall be on commercially reasonable prices and terms in a bonafide arm's length transaction with a Person that is not an Affiliate, (F) as of the date of any such sale or other disposition and after giving effect thereto, the Excess Availability shall have been not less than fifteen (15%) percent of the Maximum Credit for each of the immediately preceding ten (10) consecutive days and as of the date of any such sale or other disposition and after giving effect thereto, the Excess Availability shall be not less than such amount, (G) Administrative Agent shall have received an updated Borrowing Base Certificate that gives effect to such sale or other disposition and (H) any and all Net Proceeds payable or delivered to such Borrower in respect of such sale or other disposition shall be paid or delivered, or caused to be paid or delivered, to Administrative Agent for application to the Obligations in accordance with Section 6.4 hereof,

(vi) the sale (including a Sale and Lease-Back Transaction) by Borrowers of Eligible Real Property; provided, that:

(A) as to any such sale or Sale and Lease-Back Transaction, each of the following conditions is satisfied: (1) on the date of, and after giving effect to any such sale, the aggregate amount of the fair market value of all of such Eligible Real Property disposed of after the Effective Date, together with the fair market value of all Real Property other than Eligible Real Property, assets sold or otherwise disposed of in connection with all store closings, Prescription Files and Tax Stamps sold after the Effective Date (but excluding for this purpose sales of Non-Operating Assets and sales of Real Property that is acquired by any Borrower or Guarantor after the Effective Date permitted under the terms of this Agreement), shall not exceed ten (10%) percent of the total assets of Parent and its Subsidiaries (measured as of the date of Amendment No. 4 and excluding Non-Operating Assets and such Real Property acquired after the date of Amendment No. 4), (2) as of the date of any such sale or sale and leaseback and after giving effect thereto, no Default or Event of Default shall exist or have occurred, (3) on the date of the consummation of any such disposition, all of the Net Proceeds of any such disposition shall be remitted to Administrative Agent for application to the Obligations in accordance with Section 6.4 hereof, except, that, such Net Proceeds shall not be applied to pay Tranche A-1 Revolving Loans, (4) other than with respect to any Eligible Real Property with a fair market value of less than \$2,000,000 as determined by Administrative Agent, in the event that on the date of, and after giving

effect to any such sale, the Excess Availability is less than \$275,000,000, the Net Proceeds as to any Eligible Real Property shall be not less than the aggregate amount of Tranche A Real Estate Availability provided in respect of any such Eligible Real Property so disposed of, (5) the Tranche A Real Estate Availability shall be reduced by the amount of Tranche A Real Estate Availability provided in respect of any such Eligible Real Property, (6) Administrative Agent shall have received an updated Borrowing Base Certificate that gives effect to such sale, (7) Administrative Agent shall have received true, correct and complete copies of all agreements, documents and instruments related to any such sale or Sale and Lease-Back Transaction, (8) with respect to any such Sale and Lease-Back Transaction, the lease contemplated by such Sale and Lease-Back Transaction is executed within one-hundred and eighty (180) days of the sale of such Eligible Real Property, and (9) all consideration delivered or payable to any Borrower or Guarantor in respect of such disposition, including all

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amounts at any time payable to any Borrower or Guarantor, and all rights, benefits and remedies of any Borrower and Guarantor pursuant to any agreement, document or instrument related to any such disposition, is and shall continue at all times to be subject to the valid and enforceable, first priority perfected security interest and lien of Administrative Agent, and Borrowers and Guarantors shall take such other and further actions as may be required hereunder with respect to any such consideration, and

(B) upon the satisfaction of each of the conditions set forth in clause (A) above, including, but not limited to, the receipt by Administrative Agent of the Net Proceeds from such sale or Sale and Lease-Back Transaction in immediately available funds in the Administrative Agent Payment Account, Administrative Agent shall, at Borrowers' expense, (1) release the security interest, mortgage and lien of Administrative Agent in and upon such Eligible Real Property and (2) execute and deliver to Lead Borrower a release instrument with respect to such Eligible Real Property, in form and substance satisfactory to Administrative Agent;

(vii) the sale (including a Sale and Lease-Back Transaction) by Borrowers of Real Property (other than Eligible Real Property); provided, that:

(A) as to any such sale or Sale and Lease-Back Transaction, each of the following conditions is satisfied: (1) on the date of, and after giving effect to any such sale, the aggregate amount of the fair market value of all of such Real Property disposed of after the Effective Date, together with the fair market value of all Eligible Real Property sold after the Effective Date, assets sold or otherwise disposed of in connection with all store closings, Prescription Files and Tax Stamps sold after the Effective Date (but excluding for this purpose sales of Non-Operating Assets and sales of Real Property that is acquired by any Borrower or Guarantor after the Effective Date permitted under the terms of this Agreement), shall not exceed ten (10%) percent of the total assets of Parent and its Subsidiaries (measured as of the date of Amendment No. 4 and excluding Non-Operating Assets and such Real Property acquired after the date of Amendment No. 4), (2) Borrowers and Guarantors shall cause all of the Net Proceeds at any time payable to any Borrower or Guarantor pursuant to any agreement, document or instrument related to the such disposition to be paid by the other party or parties thereto directly to Administrative Agent for application to the Obligations in accordance with Section 6.4 hereof, except, that, such Net Proceeds shall not be applied to pay Tranche A-1 Revolving Loans, (3) Administrative Agent shall have received true, correct and complete copies of all agreements, documents and instruments related to any such sale or Sale and Lease-Back Transaction, (4) with respect to any such Sale and Lease-Back Transaction, the lease contemplated by such Sale and Lease-Back Transaction is executed within one-hundred and eighty (180) days

of the sale of such Real Property, and (5) all consideration delivered or payable to any Borrower or Guarantor in respect of such disposition, including all amounts at any time payable to any Borrower or Guarantor, and all rights, benefits and remedies of any Borrower and Guarantor pursuant to any agreement, document or instrument related to any such disposition, is and shall continue at all times to be subject to the valid and enforceable, first priority perfected security interest and lien of Administrative Agent, and Borrowers and Guarantors shall take such other and further actions as may be required hereunder with respect to any such consideration.

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(B) upon the satisfaction of each of the conditions set forth in clause (A) above, including, but not limited to, the receipt by Administrative Agent of the Net Proceeds from such sale or Sale and Lease-Back Transaction in immediately available funds in the Administrative Agent Payment Account, Administrative Agent shall, at Borrowers' expense, (1) release the security interest, mortgage and lien of Administrative Agent in and upon such Real Property and (2) execute and deliver to Lead Borrower a release instrument with respect to such Real Property, in form and substance satisfactory to Administrative Agent;

(viii) the subleases by Borrowers in effect on the Effective Date of Real Property subleased by any such Borrower to a customer of Borrowers listed on Schedule 9.7 hereto and leases or subleases entered into after the Effective Date by a Borrower or Guarantor of Real Property leased or owned by such Borrower or Guarantor acquired after the Effective Date to a customer of a Borrower (other than in connection with the closing or sale of a then existing retail store location of a Borrower or Guarantor which shall be subject to clause (v) above); provided, that, as to leases or subleases entered into after the Effective Date, (A) any such lease or sublease shall be entered into in the ordinary course of the business of such Borrower or Guarantor consistent with the current practices of such Borrower or Guarantor as of the Effective Date, (B) the aggregate amount of the payments by Borrowers and Guarantors to purchase or otherwise acquire all of such Real Property that is to be leased or subleased to a customer in any fiscal year and the aggregate amount of the rent and other amounts payable by Borrowers and Guarantors to the owner of such Real Property that is to be subleased by such Borrower or Guarantor to a customer in any fiscal year, together with the maximum aggregate amount that Borrowers and Guarantors may be required to pay under the guarantees issued by them permitted under Section 9.9(i) below in such fiscal year, shall not exceed \$10,000,000 and after giving effect to any payments for the purchase or other acquisition of any such Real Property, the Excess Availability shall be not less than fifteen (15%) percent of the Maximum Credit, (C) to the extent applicable, the Borrower or Guarantor acquiring such Real Property shall have complied with the terms of Section 9.21 hereof with respect to such Real Property and the terms of such lease shall in all respects be subordinate to the Mortgage applicable to such Real Property and otherwise subject to the terms with respect thereto set forth in the Mortgage applicable to such Real Property, and (D) as of the date of entering into any such lease or sublease and after giving effect thereto, no Default or Event of Default shall exist or have occurred,

(ix) the licensing by a Borrower or Guarantor of Intellectual Property owned by it to another Borrower or Guarantor; provided, that, as to any such license: (A) any rights of such Borrower or Guarantor shall be subject to the rights of Administrative Agent in such Intellectual Property (including the rights of Administrative Agent to use such Intellectual Property upon an Event of Default), and (B) such license shall not impair, hinder or otherwise adversely affect the rights of Administrative Agent;

(x) the abandonment or cancellation of trademarks or the failure to maintain or not renew, or the allowing to lapse of, any trademarks as registered under the laws of any country which are not material and are no longer used or useful in the business of any Borrower, Guarantor or their Subsidiaries and do not appear on or are not otherwise affixed to or incorporated in any Inventory or Equipment or necessary in connection with the Records and

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Borrowers and Guarantors have determined in good faith in the ordinary course of its business that such trademark being abandoned or cancelled, or not maintained or renewed, or allowed to lapse, as the case may be, under the laws of the jurisdiction of any country does not have a value in excess of \$500,000 as to such trademark in such country, provided, that, no Default or Event of Default shall exist or have occurred;

(xi) sales of Eligible Prescription Files; provided, that,

(A) each of the following conditions is satisfied: (1) on the date of, and after giving effect to any such sale, the aggregate amount of the fair market value of all of such Eligible Prescription Files sold after the Effective Date, together with the fair market value of all Real Property, assets sold or otherwise disposed of in connection with all store closings and Tax Stamps sold after the Effective Date (but excluding for this purpose sales of Non-Operating Assets and sales of Real Property that is acquired by any Borrower or Guarantor after the Effective Date permitted under the terms of this Agreement), shall not exceed ten (10%) percent of the total assets of Parent and its Subsidiaries (measured as of the date of Amendment No. 4 and excluding Non-Operating Assets and such Real Property acquired after the date of Amendment No. 4), (2) as of the date of any such sale and after giving effect thereto, no Default or Event of Default shall exist or have occurred, (3) on the date of consummation of any such disposition, all of the Net Proceeds of any such disposition shall be remitted to Administrative Agent for application to the Obligations in accordance with Section 6.4 hereof, (4) in the event that on the date of, and after giving effect to any such sale, the Excess Availability is less than \$275,000,000, the Net Proceeds as to the Eligible Prescription Files shall be not less than the amount of the Tranche A Prescription File Availability and Tranche A-1 Prescription File Availability provided in respect to any such Eligible Prescription Files so disposed of, (5) each of the Tranche A Prescription File Availability and Tranche A-1 Prescription File Availability shall be reduced by the amount of Tranche A Prescription File Availability and Tranche A-1 Prescription File Availability provided in respect of any such Eligible Prescription Files, (6) Administrative Agent shall have received an updated Borrowing Base Certificate giving effect to such sale, (7) Administrative Agent shall have received true, correct and complete copies of all agreements, documents and instruments related to any such sale, and (8) all consideration delivered or payable to any Borrower or Guarantor in respect of such sale, including all amounts at any time payable to any Borrower or Guarantor, and all rights, benefits and remedies of any Borrower and Guarantor pursuant to any agreement, document or instrument related to any such sale, is and shall continue at all times to be subject to the valid and enforceable, first priority perfected security interest of Administrative Agent, and Borrowers and Guarantors shall take all such other and further actions as may be required hereunder with respect to any such consideration; and

(B) upon the satisfaction of each of the conditions set forth in clause (A) above, including but not limited to the receipt by Administrative Agent of the Net Proceeds from such sale in immediately available funds in the Administrative Agent Payment Account, Administrative Agent shall, at Borrower's expense, (1) release the security interest of Administrative Agent in and upon such Prescription Files and (2)

execute and deliver to Lead Borrower a release instrument with respect to such Prescription Files, in form and substance satisfactory to Administrative Agent.

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(xii) sales of Tax Stamps in excess of the amounts required in connection with the sale or other disposition of any Inventory; provided, that:

(A) as to any such sale, each of the following conditions is satisfied: (1) on the date of, and after giving effect to any such sale, the aggregate amount of the fair market value of all of such Tax Stamps sold after the Effective Date, together with the fair market value of all Real Property, assets sold or otherwise disposed of in connection with all store closings and Prescription Files sold after the Effective Date, shall not exceed ten (10%) percent of the total assets of Parent and its Subsidiaries (measured as of the date of Amendment No. 4 and excluding Non-Operating Assets), (2) as of the date of any such sale and after giving effect thereto, no Default or Event of Default shall exist or have occurred, (3) on the date of the consummation of any such disposition, all of the Net Proceeds of any such disposition shall be remitted to Administrative Agent for application to the Obligations in accordance with Section 6.4 hereof, (4) in the event that on the date of, and after giving effect to any such sale, the Excess Availability is less than \$275,000,000, the Net Proceeds as to any Tax Stamps shall be not less than the aggregate amount included in the Tranche A Borrowing Base and the Tranche A-1 Borrowing Base in respect of any such Tax Stamps so disposed of, (5) the Tranche A Borrowing Base and the Tranche A-1 Borrowing Base shall be reduced by the amount of availability provided in respect of any such Tax Stamps, (6) Administrative Agent shall have received an updated Borrowing Base Certificate that gives effect to such sale, (7) Administrative Agent shall have received true, correct and complete copies of all agreements, documents and instruments related to any such sale, and (8) all consideration delivered or payable to any Borrower or Guarantor in respect of such disposition, including all amounts at any time payable to any Borrower or Guarantor, and all rights, benefits and remedies of any Borrower and Guarantor pursuant to any agreement, document or instrument related to any such disposition, is and shall continue at all times to be subject to the valid and enforceable, first priority perfected security interest and lien of Administrative Agent, and Borrowers and Guarantors shall take such other and further actions as may be required hereunder with respect to any such consideration, and

(B) upon the satisfaction of each of the conditions set forth in clause (A) above, including, but not limited to, the receipt by Administrative Agent of the Net Proceeds from such sale in immediately available funds in the Administrative Agent Payment Account, Administrative Agent shall, at Borrowers' expense, (1) release the security interest, mortgage and lien of Administrative Agent in and upon such Tax Stamps and (2) execute and deliver to Lead Borrower a release instrument with respect to such Tax Stamps, in form and substance satisfactory to Administrative Agent;

(xiii) sales or other dispositions by any Borrower or Guarantor of assets not otherwise subject to the terms hereof; provided, that, each of the following conditions is satisfied: (A) as of the date of any such sale or other disposition and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, (B) any such sale is made at fair market values and the aggregate fair market value of all such assets sold during any fiscal year of Borrowers shall not exceed \$10,000,000, except as Administrative Agent may otherwise agree in writing, (C) Borrowers and Guarantors shall cause all of the Net Proceeds at any time payable to any Borrower or Guarantor pursuant to any agreement, document or instrument related to the such disposition to be paid by the other party or parties thereto directly

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to Administrative Agent for application to the Obligations in accordance with Section 6.4 hereof, (D) not less than eighty (80%) percent of the consideration for such disposition is in the form of cash and (E) the assets to be so disposed are not necessary or economically desirable in connection with the principal business of Borrowers.

(xiv) wind up, liquidate or dissolve, ~~except that~~ any Borrower or Guarantor (other than Parent) may wind up, liquidate and dissolve, ~~provided, that~~, each of the following conditions is satisfied, (A) the winding up, liquidation and dissolution of such Borrower or Guarantor (as the case may be) shall not violate any law or any order or decree of any court or other Governmental Authority in any material respect and shall not conflict with or result in the breach of, or constitute a default under, any indenture, mortgage, deed of trust, or any other agreement or instrument to which any Borrower or Guarantor is a party or may be bound, (B) such winding up, liquidation or dissolution shall be done in accordance with the requirements of all applicable laws and regulations, (C) effective upon such winding up, liquidation or dissolution, substantially all of the assets and properties of such Borrower or Guarantor shall be duly and validly transferred and assigned to any Borrower, free and clear of any liens, restrictions or encumbrances other than the security interest and liens of Administrative Agent (and Administrative Agent shall have received such evidence thereof as Administrative Agent may require) and Administrative Agent shall have received such deeds, assignments or other agreements as Administrative Agent may request to evidence and confirm the transfer of such assets of such Borrower or Guarantor (as the case may be) to such Borrower, (D) Administrative Agent shall have received all documents and agreements that any Borrower or Guarantor has filed with any Governmental Authority or as are otherwise required to effectuate such winding up, liquidation or dissolution, (E) no Borrower or Guarantor shall assume any Indebtedness, obligations or liabilities as a result of such winding up, liquidation or dissolution, or otherwise become liable in respect of any obligations or liabilities of the entity that is winding up, liquidating or dissolving, unless such Indebtedness is otherwise expressly permitted hereunder, (F) Administrative Agent shall have received not less than ten (10) Business Days prior written notice of the intention of such Borrower or Guarantor to wind up, liquidate or dissolve and (G) as of the date of such winding up, liquidation or dissolution and after giving effect thereto, no Default or Event of Default shall exist or have occurred;

(xv) dispositions of Rolling Stock in the ordinary course of business that is substantially worn, damaged, obsolete, or, in the judgment of a Borrower, no longer useful or necessary in its business so long as Administrative Agent shall have received an updated Borrowing Base Certificate that gives effect to such disposition; or

(xvi) so long as no Event of Default has occurred and is continuing or would immediately result therefrom, transfers of assets (A) from any Borrower to any other Borrower and (B) from any Guarantor to any Borrower or any other Guarantor.

**17.8 Encumbrances.** Each Borrower and Guarantor shall not, and shall not permit any Subsidiary to, create, incur, assume or suffer to exist any security interest, mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of its assets or properties, including the Collateral, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any security interest or lien with respect to any such assets or properties, ~~except:~~

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(a) the security interests and liens of Administrative Agent for itself and the benefit of Secured Parties;

(b) liens securing the payment of taxes, assessments or other governmental charges or levies either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Borrower, or Guarantor or Subsidiary, as the case may be and with respect to which adequate reserves have been set aside on its books;

(c) non-consensual statutory liens (other than liens securing the payment of taxes) arising in the ordinary course of such Borrower's, Guarantor's or Subsidiary's business to the extent: (i) such liens secure Indebtedness which is not overdue or (ii) such liens secure Indebtedness relating to claims or liabilities which are fully insured (subject to customary deductibles with respect to such insurance) and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued and available to such Borrower, Guarantor or such Subsidiary, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books;

(d) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of Real Property which do not interfere in any material respect with the use of such Real Property or ordinary conduct of the business of such Borrower, Guarantor or such Subsidiary as presently conducted thereon or materially impair the value of the Real Property which may be subject thereto (including any of such zoning restrictions, easements, licenses, covenants and other restrictions that are set forth in the title insurance policies issued to Administrative Agent with respect to the Real Property as of the Effective Date);

(e) purchase money security interests in or landlord liens upon Equipment or other property (including Capital Leases) and purchase money mortgages on Real Property in each case either (i) existing on the date of this Agreement or (ii) arising after the Effective Date to secure Indebtedness permitted under Section 9.9(b) hereof;

(f) pledges and deposits of cash by any Borrower or Guarantor after the Effective Date in the ordinary course of business in connection with workers' compensation, social security, unemployment insurance and other types of social security benefits consistent with the current practices of such Borrower or Guarantor as of the Effective Date;

(g) pledges and deposits of cash by any Borrower or Guarantor after the Effective Date to secure the performance of tenders, bids, leases, trade contracts (other than for the repayment of Indebtedness), leases, surety and appeal bonds, statutory obligations and other similar obligations in each case in the ordinary course of business consistent with the current practices of such Borrower or Guarantor as of the Effective Date;

(h) liens arising from (i) operating leases and the precautionary UCC financing statement filings in respect thereof and (ii) equipment or other goods which are not owned by any Borrower or Guarantor located on the premises of such Borrower or Guarantor (but not in connection with, or as part of, the financing thereof), whether pursuant to consignment

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arrangements or otherwise, from time to time in the ordinary course of business and consistent with current practices of such Borrower or Guarantor and the precautionary UCC financing statement filings in respect thereof;

(i) liens or rights of setoff against credit balances of Borrowers with Credit Card Issuers or Credit Card Processors or amounts owing by such Credit Card Issuers or Credit Card Processors to Borrowers in the ordinary course of business, but not liens on or rights of setoff against any other property or assets of Borrowers or Guarantors, pursuant to the Credit Card Agreements (as in effect on the Effective Date) to secure the obligations of Borrowers to the Credit Card Issuers or Credit Card Processors as a result of fees and chargebacks;

(j) statutory or common law liens or rights of setoff of depository banks with respect to funds of Borrowers or Guarantors at such banks to secure fees and charges in connection with returned items or the standard fees and charges of such banks in connection with the deposit accounts maintained by Borrowers and Guarantors at such banks (but not any other Indebtedness or obligations);

(k) judgments and other similar liens arising after the Effective Date in connection with court proceedings that do not constitute an Event of Default, provided, that, (i) such liens are being contested in good faith and by appropriate proceedings diligently pursued, (ii) adequate reserves or other appropriate provision, if any, as are required by GAAP have been made therefor, (iii) a stay of enforcement of any such liens is in effect and (iv) Administrative Agent may establish a Reserve with respect thereto;

(l) the security interests and liens upon Equipment, Real Property and related assets permitted to secure Refinancing Indebtedness in accordance with the terms of Section 9.9(j) hereof;

(m) the rights of use and possession of lessees of Real Property of any Borrower or Guarantor to the extent the lease giving rise to such rights is otherwise permitted hereunder;

(n) the security interests and liens in favor of the Qualified Debt Agent, in and on the assets and properties of Borrowers and Guarantors to secure the Indebtedness to the extent permitted under Section 9.9(f) hereof; provided, that, such security interests and liens in favor of the Qualified Debt Agent are junior and subordinate to the security interests and liens on the Collateral (other than with respect to the Qualified Debt Offering Priority Collateral) granted by Borrowers and Guarantors in favor of Administrative Agent as set forth in the Qualified Debt Intercreditor Agreement, in form and substance satisfactory to Administrative Agent and the Required Lenders;

(o) the security interests and liens set forth on Schedule 8.4 to the Information Certificate;

(p) pledges of stock of third parties acquired by Borrowers in the ordinary course of business in connection with investments permitted under Section 9.10(k) hereof; and

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(q) other security interests and liens not described under this Section 9.8 to secure Indebtedness permitted under Section 9.9 hereof, to the extent that such security interests and liens do not, in the aggregate, secure Indebtedness in excess of \$10,000,000; provided, that, such security interests and liens shall not encumber property or assets of any Borrower or Guarantor consisting of (i) Receivables, Inventory, Equipment, Rolling Stock, Real Property, deposit accounts, (ii) instruments, documents, investment property, letters of credit, supporting obligations and chattel paper, in each case, related to the assets described in clause (i) above, (iii) Records related to any of

the foregoing and (iv) proceeds and products of any of the items of types of assets described in clauses (i) through (iii) above.

17.9 **Indebtedness.** Each Borrower and Guarantor shall not, and shall not permit any Subsidiary to, incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any Indebtedness, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly), the Indebtedness, performance, obligations or dividends of any other Person, except:

(a) the Obligations;

(b) purchase money Indebtedness (including Capital Leases) existing on the Effective Date or arising after the Effective Date to the extent secured by purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on Real Property so long as such security interests and mortgages do not apply to any property of such Borrower, Guarantor or Subsidiary other than the Equipment or Real Property so acquired, and the Indebtedness secured thereby does not exceed the cost of the Equipment or Real Property so acquired, as the case may be;

(c) guarantees by any Borrower or Guarantor of the Obligations of the other Borrowers or Guarantors in favor of Administrative Agent for the benefit of Lenders;

(d) the Indebtedness of any Borrower or Guarantor to any other Borrower or Guarantor arising after the Effective Date pursuant to loans by any Borrower or Guarantor permitted under Section 9.10(g) hereof;

(e) [intentionally omitted];

(f) Indebtedness arising after the Effective Date to the Qualified Debt Agent or other holders thereof (but not to any other Borrower or Guarantor or other Subsidiary of Parent) pursuant to the Qualified Debt Offering, provided, that, each of the following conditions is satisfied:

(i) the aggregate principal amount of such Indebtedness shall not exceed \$800,000,000 less the aggregate amount of all repayments or redemptions, whether optional or mandatory, in respect thereof, plus interest thereon at the rate provided for in the agreement or instrument evidencing or giving rise to such Indebtedness as in effect on the date such agreement or instrument is entered into,

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(ii) Administrative Agent shall have received not less than thirty (30) days prior written notice of the intention of such Borrower or Guarantor to incur such Indebtedness, which notice shall set forth in reasonable detail satisfactory to Administrative Agent the amount of such Indebtedness, the person or persons to whom such Indebtedness will be owed, the interest rate, the schedule of repayments and maturity date with respect thereto and such other information as Administrative Agent may request with respect thereto,

(iii) such Indebtedness shall have a maturity date no earlier than six (6) months after the Maturity Date and shall not include terms and conditions with respect to any Borrower or Guarantor which are more burdensome or restrictive in any material respect than those contained in this Agreement, taken as a whole, except with respect to financial covenants, provided, that, prior to incurring such Indebtedness, Borrowers shall have delivered to Administrative Agent projections, in form and substance satisfactory to Administrative Agent, which show that Borrowers will be in

compliance with such financial covenants through the end of the term of such Indebtedness.

(iv) the Indebtedness incurred pursuant to this Section 9.9(f) may be secured by a lien on the Collateral, provided, that, Administrative Agent shall have received the Qualified Debt Intercreditor Agreement applicable to such Indebtedness, in form and substance satisfactory to Administrative Agent in its sole discretion, duly authorized, executed and delivered by the holders of such Indebtedness or the Qualified Debt Agent, which shall provide among other things for the subordination of such Persons' lien on the Collateral (other than the Qualified Debt Offering Priority Collateral) and the subordination of the Administrative Agent's lien on the Qualified Debt Offering Priority Collateral as provided in Section 9.8(l) hereof,

(v) to the extent that the holders of such Indebtedness or the Qualified Debt Agent are granted a security interest in the Qualified Debt Offering Priority Collateral, Administrative Agent shall have a second priority security interest on such Collateral,

(vi) as of the date of incurring such Indebtedness, and after giving effect thereto, the ratio of Total Funded Indebtedness to pro-forma EBITDA shall not exceed 4.0 to 1.0,

(vii) Administrative Agent shall have received true, correct and complete copies of all agreements, documents or instruments evidencing or otherwise related to such Indebtedness, in each case in form and substance reasonably satisfactory to Administrative Agent,

(viii) Borrowers and Guarantors shall not, directly or indirectly, make any payments in respect of such Indebtedness, except that Borrowers may make regularly scheduled payments of principal and interest in respect of such Indebtedness so long as, as of the date of any such payment and after giving effect thereto, either (A) (1) the aggregate amount of the Excess Availability of Borrowers shall be greater than an amount equal to twenty-five (25%) percent of the Total Borrowing Base, (2) the pro forma projected aggregate amount of the Excess Availability of Borrowers (subject to the receipt of such certificates or information as Administrative Agent may require to confirm such projection) shall be greater than an amount equal to twenty-five (25%) percent of the Total Borrowing Base for the first six (6) months after such payment and (3) no Default or Event of Default shall exist or have occurred and is

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continuing, or (B) (1) the aggregate amount of the Excess Availability of Borrowers shall be greater than an amount equal to twenty (20%) percent of the Total Borrowing Base, (2) the pro forma projected aggregate amount of the Excess Availability of Borrowers (subject to the receipt of such certificates or information as Administrative Agent may require to confirm such projection) shall be greater than an amount equal to twenty (20%) percent of the Total Borrowing Base for the first six (6) months after such payment, (3) the pro-forma Fixed Charge Coverage Ratio of Borrowers (on a combined basis) for the most recently ended twelve (12) month period for which Administrative Agent has received financial statements of Borrowers shall be greater than 1.00 to 1:00 and (4) no Default or Event of Default shall exist or have occurred and is continuing,

(ix) except as Administrative Agent may otherwise agree in writing, (A) to the extent that such Indebtedness shall be incurred for the purpose of financing an acquisition permitted by Section 9.10(i) hereof, the proceeds of such Qualified Debt Offering shall be used for the purchase price and expenses of such acquisition and (B)

otherwise such proceeds shall be paid to Administrative Agent for application to the Obligations in accordance with Section 6.4 hereof,

(x) Borrowers and Guarantors shall not, directly or indirectly, (A) amend, modify, alter or change the terms of such Indebtedness or any agreement, document or instrument related thereto, except, that, Borrowers or Guarantors may, after prior written notice to Administrative Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof, or defer the timing of any payments in respect thereof, or to forgive or cancel any portion of such Indebtedness (other than pursuant to payments thereof), or to reduce the interest rate or any fees in connection therewith, or (B) redeem, retire, defease, purchase or otherwise acquire such Indebtedness, or set aside or otherwise deposit or invest any sums for such purpose (except pursuant to payments permitted in clause (f)(viii) above),

(xi) Borrowers and Guarantors shall furnish to Administrative Agent all notices or demands in connection with such Indebtedness either received by any Borrower or Guarantor or on its behalf promptly after the receipt thereof, or sent by any Borrower or Guarantor or on its behalf concurrently with the sending thereof, as the case may be, and

(xii) only one Qualified Debt Offering can be outstanding at any time.

(g) Indebtedness of any Borrower or Guarantor arising from (i) any judgment that constitutes Indebtedness that does not constitute an Event of Default under Section 10.1(d) hereof and (ii) any ERISA Event that constitutes Indebtedness that does not constitute an Event of Default under Section 10.1(k) hereof;

(h) Indebtedness of any Borrower or Guarantor entered into in the ordinary course of business pursuant to Hedge Agreements; provided, that, (i) such arrangements are with a Bank Product Provider, (ii) such arrangements are not for speculative purposes and (iii) such Indebtedness shall be unsecured, except to the extent such Indebtedness constitutes part of the Obligations arising under or pursuant to Hedge Agreements with a Bank Product Provider that are secured under the terms hereof;

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(i) Indebtedness of any Borrower or Guarantor arising after the Effective Date in the ordinary course of the business of such Borrower or Guarantor pursuant to guarantees in favor of third parties by such Borrower or Guarantor of the obligations of its customers under leases of real or personal property from such third parties by such customers, provided, that, (i) as of the date of entering into such guarantee, and after giving effect thereto, Excess Availability shall be not less than fifteen (15%) percent of the Maximum Credit and (ii) as of the date of entering into any such guarantee and after giving effect thereto, no Default or Event of Default shall exist or have occurred;

(j) Indebtedness of any Borrower or Guarantor arising after the Effective Date issued in exchange for, or the proceeds of which are used to extend, refinance, replace or substitute for Indebtedness permitted under Sections 9.9(b), 9.9(k), 9.9(l) and 9.9(o) hereof (the "Refinancing Indebtedness"); provided, that, as to any such Refinancing Indebtedness, each of the following conditions is satisfied: (i) Administrative Agent shall have received not less than ten (10) Business Days' prior written notice of the intention to incur such Indebtedness, which notice shall set forth in reasonable detail satisfactory to Administrative Agent, the amount of such Indebtedness, the schedule of repayments and maturity date with respect thereto and such other information with respect thereto as Administrative Agent may reasonably request, (ii) promptly upon

Administrative Agent's request, Administrative Agent shall have received true, correct and complete copies of all agreements, documents and instruments evidencing or otherwise related to such Indebtedness, as duly authorized, executed and delivered by the parties thereto, (iii) the Refinancing Indebtedness shall have a Weighted Average Life to Maturity and a final maturity equal to or greater than the Weighted Average Life to Maturity and the final maturity, respectively, of the Indebtedness being extended, refinanced, replaced, or substituted for, (iv) the Refinancing Indebtedness shall rank in right of payment no more senior than, and be at least subordinated (if subordinated) to, the Obligations as the Indebtedness being extended, refinanced, replaced or substituted for, (v) the Refinancing Indebtedness shall not include terms and conditions with respect to any Borrower or Guarantor which are more burdensome or restrictive in any material respect than those included in the Indebtedness so extended, refinanced, replaced or substituted for, (vi) such Indebtedness incurred by any Borrower or Guarantor shall be at rates and with fees or other charges that are commercially reasonable, (vii) the incurring of such Indebtedness shall not result in an Event of Default, (viii) the principal amount of such Refinancing Indebtedness shall not exceed the principal amount of the Indebtedness so extended, refinanced, replaced or substituted for (plus the amount of reasonable refinancing fees and expenses incurred in connection therewith outstanding on the date of such event), (ix) the Refinancing Indebtedness shall be secured by substantially the same assets (or less of such assets) that secure the Indebtedness so extended, refinanced, replaced or substituted for, provided, that, such security interests with respect to the Refinancing Indebtedness shall have a priority no more senior than, and be at least as subordinated, if subordinated (on terms and conditions substantially similar to the subordination provisions applicable to the Indebtedness so extended, refinanced, replaced or substituted for or as is otherwise acceptable to Administrative Agent) as the security interest with respect to the Indebtedness so extended, refinanced, replaced or substituted for, (x) Borrowers and Guarantors may only make payments of principal, interest and fees, if any, in respect of such Indebtedness to the extent such payments would have been permitted hereunder in respect of the Indebtedness so extended, refinanced, replaced or substituted for (and except as otherwise permitted below), (xi) Borrowers and

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Guarantors shall not, directly or indirectly, (A) amend, modify, alter or change any terms of the agreements with respect to such Refinancing Indebtedness, except that Borrowers and Guarantors may, after prior written notice to Administrative Agent, amend, modify, alter or change the terms thereof to the extent permitted with respect to the Indebtedness so extended, refinanced, replaced or substituted for, or (B) redeem, retire, defease, purchase or otherwise acquire such Indebtedness, or set aside or otherwise deposit or invest any sums for such purpose (other than with Refinancing Indebtedness to the extent permitted herein and to the extent permitted with respect to the Indebtedness so extended, refinanced, replaced or substituted for), and (xii) Borrowers and Guarantors shall furnish to Administrative Agent copies of all material notices or demands in connection with Indebtedness received by any Borrower or Guarantor or on its behalf promptly after the receipt thereof or sent by any Borrower or Guarantor or on its behalf concurrently with the sending thereof, as the case may be;

(k) the Indebtedness set forth on Schedule 9.9 to the Information Certificate; provided, that, (i) Borrowers and Guarantors may only make regularly scheduled payments of principal and interest in respect of such Indebtedness in accordance with the terms of the agreement or instrument evidencing or giving rise to such Indebtedness as in effect on the Effective Date, (ii) Borrowers and Guarantors shall not, directly or indirectly, (A) amend, modify, alter or change the terms of such

Indebtedness or any agreement, document or instrument related thereto as in effect on the Effective Date except, that, Borrowers and Guarantors may, after prior written notice to Administrative Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof, or defer the timing of any payments in respect thereof, or to forgive or cancel any portion of such Indebtedness (other than pursuant to payments thereof), or to reduce the interest rate or any fees in connection therewith, or (B) redeem, retire, defease, purchase or otherwise acquire such Indebtedness, or set aside or otherwise deposit or invest any sums for such purpose, and (iii) Borrowers and Guarantors shall furnish to Administrative Agent all notices or demands in connection with such Indebtedness either received by any Borrower or Guarantor or on its behalf, promptly after the receipt thereof, or sent by any Borrower or Guarantor or on its behalf, concurrently with the sending thereof, as the case may be;

(l) unsecured Indebtedness of Parent evidenced by the Senior Notes as in effect on the date of their issuance or as permitted to be amended pursuant to the terms hereof, provided, that:

(i) the aggregate principal amount of all such Indebtedness evidenced by the Senior Notes shall not exceed \$50,000,000 less the aggregate amount of all repayments or redemptions, whether optional or mandatory, in respect thereof, plus interest thereon calculated in the manner provided for in the Senior Notes as in effect on the date of the issuance thereof,

(ii) Borrowers and Guarantors shall not, directly or indirectly, make any payments in respect of such Indebtedness, except that Parent may make (A) regularly scheduled payments of interest and fees in respect of such Indebtedness when due in accordance with the terms of the Senior Notes as in effect on the date of the issuance thereof, (B) payments of principal in respect of such Indebtedness when scheduled to mature in accordance with the terms of the Senior Note Indenture (as in effect on December 6, 2012) and any other mandatory prepayments as required under the terms of the Senior Note Indenture (as in effect on December

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6, 2012) and (C) optional prepayments on principal in respect of such Indebtedness, provided, that, as of the date of any such prepayment and after giving effect thereto, (1) no Default or Event of Default shall exist or have occurred and be continuing, (2) so long as the aggregate amount of all such prepayments, together with the aggregate amount of distributions permitted under Section 9.11(f), are less than \$25,000,000 in any twelve (12) consecutive month period, no Cash Dominion Event shall exist, (3) on and after such time that the aggregate amount of all such prepayments, together with the aggregate amount of distributions permitted under Section 9.11(f), exceed \$25,000,000 in any twelve (12) consecutive month period, (x) the daily average of the Excess Availability for the immediately preceding ninety (90) consecutive day period shall have been not less than fifteen (15%) percent of the Loan Limit and after giving effect to any such prepayment in respect thereof, on a pro forma basis using the Total Borrowing Base as of the date of the most recent calculation of the Total Borrowing Base immediately prior to any such prepayment, the Excess Availability shall be not less than fifteen (15%) percent of the Loan Limit and (y) Administrative Agent shall have received projections reasonably satisfactory to it for the twelve (12) month period after the date of any such prepayment showing, on a pro forma basis after giving effect to such prepayment, Excess Availability at all times during such period of not less than fifteen (15%) percent of the Loan Limit, and (4) Administrative Agent shall have received not less than ten (10) Business Days prior written notice of such proposed prepayment

and such information with respect thereto as Administrative Agent may reasonably request, including the proposed date and the amount of such prepayment,

(iii) at no time shall the aggregate amount of the Loans (including Swing Line Loans) and the Letter of Credit Accommodations outstanding at any time exceed the amount that would give rise to a default or event of default under the Senior Note Indenture or which would give rise to the obligation of Parent or any of its Subsidiaries to grant a lien on any assets to secure the Senior Notes

(iv) Borrowers and Guarantors shall not, directly or indirectly, amend, modify, alter or change in any material respect any terms of such Indebtedness or any of the Senior Notes or the Senior Note Indenture or any related agreements, documents and instruments, except that Parent may, after prior written notice to Administrative Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof or defer the timing of any payments in respect thereof, or to forgive or cancel any portion of such Indebtedness other than pursuant to payments thereof, or to reduce the interest rate or any fees in connection therewith, and

(v) Borrowers and Guarantors shall furnish to Administrative Agent all written notices or demands in connection with such Indebtedness either received by any Borrower or Guarantor or on its behalf, promptly after the receipt thereof, or sent by any Borrower or Guarantor or on its behalf, concurrently with the sending thereof, as the case may be;

(m) guarantees by any Borrower of any Indebtedness of any other Borrower otherwise permitted to be incurred under this Agreement;

(n) contingent Indebtedness of any Borrower or Guarantor arising pursuant to a performance, bid or surety bond in the ordinary course of business, provided, that, (i)

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Administrative Agent shall have received true, correct and complete copies of all material agreements, documents or instruments evidencing or otherwise related to such Indebtedness, as duly authorized, executed and delivered by the parties thereto, and (ii) Administrative Agent shall have received not less than five (5) days prior written notice of the intention of such Borrower or Guarantor to incur such Indebtedness; and

(o) Indebtedness of any Borrower or Guarantor arising after the Effective Date to any third person (but not to any other Borrower or Guarantor) not subject to the other terms hereof, provided, that, each of the following conditions is satisfied:

(i) Administrative Agent shall have received not less than thirty (30) days prior written notice of the intention of such Borrower or Guarantor to incur such Indebtedness, which notice shall set forth in reasonable detail satisfactory to Administrative Agent the amount of such Indebtedness, the person or persons to whom such Indebtedness will be owed, the interest rate, the schedule of repayments and maturity date with respect thereto and such other information as Administrative Agent may request with respect thereto,

(ii) such Indebtedness shall have a maturity date no earlier than six (6) months after the Maturity Date and shall not include terms and conditions with respect to any Borrower or Guarantor which are more burdensome or restrictive in any material respect than those contained in this Agreement, taken as a whole, except with respect to financial covenants, provided, that, prior to incurring such Indebtedness, Borrowers shall have delivered to Administrative Agent projections, in form and substance

satisfactory to Administrative Agent, which show that Borrowers will be in compliance with such financial covenants through the end of the term of such Indebtedness.

(iii) as of the date of incurring such Indebtedness, and after giving effect thereto, the ratio of Total Funded Indebtedness to pro-forma EBITDA shall not exceed 4.0 to 1.0,

(iv) Administrative Agent shall have received true, correct and complete copies of all agreements, documents or instruments evidencing or otherwise related to such Indebtedness, in each case in form and substance reasonably satisfactory to Administrative Agent,

(v) Borrowers and Guarantors shall not, directly or indirectly, make any payments in respect of such Indebtedness, ~~except that~~ Borrowers may make regularly scheduled payments of principal and interest in respect of such Indebtedness so long as, as of the date of any such payment and after giving effect thereto, Excess Availability shall be not less than fifteen (15%) percent of the Maximum Credit,

(vi) Borrowers and Guarantors shall not, directly or indirectly, (A) amend, modify, alter or change the terms of such Indebtedness or any agreement, document or instrument related thereto, ~~except, that~~, Borrowers or Guarantors may, after prior written notice to Administrative Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof, or defer the timing of any payments in respect thereof, or to forgive or cancel any portion of such Indebtedness (other than pursuant to payments thereof), or to reduce the interest rate or any fees in connection therewith, or (B) redeem, retire, defease, purchase or

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otherwise acquire such Indebtedness, or set aside or otherwise deposit or invest any sums for such purpose (except pursuant to payments permitted in clause (o)(v) above),

(vii) Borrowers and Guarantors shall furnish to Administrative Agent all notices or demands in connection with such Indebtedness either received by any Borrower or Guarantor or on its behalf promptly after the receipt thereof, or sent by any Borrower or Guarantor or on its behalf concurrently with the sending thereof, as the case may be, and

(p) Indebtedness of any Borrower or Guarantor arising after the Effective Date in the ordinary course of the business of such Borrower or Guarantor pursuant to guarantees in favor of third parties by such Borrower or Guarantor of the obligations of its customers (other than guarantees of lease obligations referenced in Section 9.9(i) above), provided, that, (i) as of the date of entering into such guarantee, and after giving effect thereto, Excess Availability shall be not less than fifteen (15%) percent of the Maximum Credit, (ii) the aggregate principal amount of such guarantees under this Section 9.9(p) at any time outstanding shall not exceed \$25,000,000 and (iii) as of the date of entering into any such guarantee and after giving effect thereto, no Default or Event of Default shall exist or have occurred.

17.10 Loans, Investments, Etc. Each Borrower and Guarantor shall not, and shall not permit any Subsidiary to, directly or indirectly, make any loans or advance money or property to any person, or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the Capital Stock or Indebtedness or all or a substantial part of the assets or property of any person, or form or acquire any Subsidiaries, or agree to do any of the foregoing, except:

(a) the endorsement of instruments for collection or deposit in the ordinary course of business;

(b) investments in cash or Cash Equivalents, provided, that, (i) on and after a Cash Dominion Event, no such investments shall be permitted unless no Loans are then outstanding and (ii) the terms and conditions of Section 5.2 hereof shall have been satisfied with respect to the deposit account, investment account or other account in which such cash or Cash Equivalents are held;

(c) the existing equity investments of each Borrower and Guarantor as of the Effective Date in its Subsidiaries, provided, that, no Borrower or Guarantor shall have any further obligations or liabilities to make any capital contributions or other additional investments or other payments to or in or for the benefit of any of such Subsidiaries, except for Subsidiaries that become a party to this Agreement as described in Section 9.24 hereof;

(d) loans and advances by any Borrower or Guarantor to employees of such Borrower or Guarantor not to exceed the principal amount of \$5,000,000 in the aggregate at any time outstanding for: (i) reasonably and necessary work-related travel or other ordinary business expenses to be incurred by such employee in connection with their work for such Borrower or Guarantor and (ii) reasonable and necessary relocation expenses of such employees (including home mortgage financing for relocated employees);

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(e) stock or obligations issued to any Borrower or Guarantor by any Person (or the representative of such Person) in respect of Indebtedness of such Person owing to such Borrower or Guarantor in connection with the insolvency, bankruptcy, receivership or reorganization of such Person or a composition or readjustment of the debts of such Person; provided, that, the original of any such stock or instrument evidencing such obligations shall be promptly delivered to Administrative Agent, upon Administrative Agent's request, together with such stock power, assignment or endorsement by such Borrower or Guarantor as Administrative Agent may request;

(f) obligations of Account Debtors to any Borrower or Guarantor arising from Accounts which are past due evidenced by a promissory note made by such Account Debtor payable to such Borrower or Guarantor; provided, that, promptly upon the receipt of the original of any such promissory note or other instrument, the principal face amount of which, when aggregated with the principal face amount of all other such promissory notes and instruments received by any Borrower or Guarantor, exceed \$1,000,000 in the aggregate, each such promissory note or instrument shall be endorsed to the order of Administrative Agent by such Borrower or Guarantor and promptly delivered to Administrative Agent as so endorsed;

(g) loans by a Borrower to another Borrower, or loans by a Borrower to a Guarantor, or loans by a Guarantor to a Borrower or another Guarantor after the Effective Date, provided, that,

(i) as to all of such loans, (A) the Indebtedness arising pursuant to any such loan shall not be evidenced by a promissory note or other instrument, unless the single original of such note or other instrument is promptly delivered to Administrative Agent upon its request to hold as part of the Collateral, with such endorsement and/or assignment by the payee of such note or other instrument as Administrative Agent may

require, and (B) as of the date of any such loan and after giving effect thereto, the Borrower or Guarantor making such loan shall be Solvent,

(ii) as to loans by a Guarantor to a Borrower, (A) the Indebtedness arising pursuant to such loan shall be subject to, and subordinate in right of payment to, the right of Administrative Agent and Lenders to receive the prior final payment and satisfaction in full of all of the Obligations on terms and conditions acceptable to Administrative Agent, (B) promptly upon Administrative Agent's request, Administrative Agent shall have received a subordination agreement, in form and substance satisfactory to Administrative Agent, providing for the terms of the subordination in right of payment of such Indebtedness of such Borrower to the prior final payment and satisfaction in full of all of the Obligations, duly authorized, executed and delivered by such Guarantor and such Borrower, and (C) such Borrower shall not, directly or indirectly make, or be required to make, any payments in respect of such Indebtedness prior to the end of the then current term of this Agreement;

(iii) as to loans by a Borrower to a Guarantor, (A) the proceeds of any such loans shall only be used by such Guarantor either (1) for the payment of taxes or other actual and necessary reasonable operating expenses of such Guarantor, provided, that, the aggregate amount of all such loans in any fiscal year shall not exceed \$5,000,000 or (2) for the making of a contemporaneous loan to another Borrower, provided, that, the proceeds of any such loan by a

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Borrower to a Guarantor shall be paid directly to the Borrower that is to receive the proceeds of the loan from the Guarantor, (B) the Indebtedness arising pursuant to any such loan shall not be evidenced by a promissory note or other instrument, unless the single original of such note or other instrument is promptly delivered to Administrative Agent upon its request to hold as part of the Collateral, with such endorsement and/or assignment by the payee of such note or other instrument as Administrative Agent may require, (C) as of the date of any such loan and after giving effect thereto, the Borrower making such loan shall be Solvent, and (D) as of the date of any such loan and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing;

(h) loans of money or property (other than Collateral) after the Effective Date by any Borrower or Guarantor to any customers of any Borrower or Guarantor consistent with the current practices of Borrowers and Guarantors as of the Effective Date (and including advances to customers that are repaid through the purchase of goods by such customers in the ordinary course of the business of Borrowers and Guarantors consistent with the current practices of Borrowers and Guarantors as of the Effective Date); provided, that, as to any such loans, each of the following conditions is satisfied as determined by Administrative Agent:

(i) as of the date of any such loan, and in each case after giving effect thereto, no Default or Event of Default shall exist or have occurred,

(ii) as of the date of any such loan, and in each case after giving effect thereto, the Excess Availability shall have been not less than fifteen (15%) percent of the Maximum Credit for each of the immediately preceding ten (10) consecutive days and as of the date of any such loan and after giving effect thereto, the Excess Availability shall be not less than fifteen (15%) percent of the Maximum Credit,

(iii) the Person receiving such loan shall be engaged in a business related, ancillary or complementary to the business of Borrowers permitted in this Agreement,

(iv) the original of any promissory note or other instrument evidencing the Indebtedness arising pursuant to such loans shall be delivered, or caused to be delivered, to Administrative Agent, at Administrative Agent's option, together with an appropriate endorsement, in form and substance satisfactory to Administrative Agent, and

(v) Administrative Agent shall have received (A) with respect to any such loan in an amount equal to or greater than \$2,500,000, not less than two (2) Business Days' prior written notice thereof setting forth in reasonable detail the nature and terms thereof, (B) true, correct and complete copies of all agreements, documents and instruments relating thereto and (C) such other information with respect thereto as Administrative Agent may request, including a report once each month on the outstanding balance of all such loans and advances and including the then outstanding amount of the existing loans and advances by Borrowers to third parties made prior to the Effective Date set forth on Schedule 9.10 to the Information Certificate;

(i) loans of money or property (other than Collateral) not otherwise provided for in this Agreement, after the Effective Date, by any Borrower or Guarantor to any Person (other than to a Borrower or Guarantor or any of their Affiliates), including construction loans

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for stores or other facilities owned or supplied by a Borrower or a Guarantor; provided, that, as to any such loans, each of the following conditions is satisfied as determined by Administrative Agent:

(i) as of the date of any such loan, and in each case after giving effect thereto, no Default or Event of Default shall exist or have occurred,

(ii) as of the date of any such loan, and after giving effect thereto, the Excess Availability shall have been not less than twenty-five (25%) percent of the Total Borrowing Base for each of immediately preceding ten (10) consecutive days and as of the date of any such loan and after giving effect thereto, the Excess Availability shall be not less than twenty-five (25%) percent of the Total Borrowing Base,

(iii) if requested by Administrative Agent, the payments (including payments evidenced by any note or instrument, which shall be endorsed to Administrative Agent) and the rights under any documents or instruments evidencing such loan shall be collaterally assigned by such Borrower or Guarantor to Administrative Agent pursuant to an agreement, in form and substance reasonably satisfactory to Administrative Agent, executed by such Borrower or Guarantor and acknowledged by the Person receiving such loan, and

(iv) the aggregate principal amount of all such loans under this subsection (i) shall not exceed \$25,000,000 outstanding at any one time,

(j) the purchase by any Borrower or Guarantor of all or a substantial part of the assets or Capital Stock of any Person located in the United States or investment after the Effective Date by a Borrower or Guarantor by capital contribution in any Person (other than a Borrower or Guarantor), provided, that, each of the following conditions is satisfied:

(i) as of the date of such purchase or investment and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing,

(ii) for any such acquisition or investment, so long as the aggregate consideration for all such acquisitions and investments in any twelve (12) consecutive month period is less than \$25,000,000 after giving effect to such acquisition or investment, no Cash Dominion Event shall exist,

(iii) on and after such time that the aggregate amount of the consideration for all such acquisitions and investments in any twelve (12) consecutive month period is in excess of \$25,000,000, as to any such acquisition or investment thereafter, as of the date of such acquisition or investment and the making of any payment in connection therewith and after giving effect thereto,

(A) the daily average of the Excess Availability for the immediately preceding ninety (90) consecutive day period shall have been not less than fifteen (15%) percent of the Loan Limit and after giving effect to any such payment in respect thereof, on a pro forma basis using the Total Borrowing Base as of the date of the most recent calculation of the Total

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Borrowing Base immediately prior to any such payment, the Excess Availability shall be not less than fifteen (15%) percent of the Loan Limit, and

(B) Administrative Agent shall have received projections reasonably satisfactory to it for the twelve (12) month period after the date of any such payment showing, on a pro forma basis after giving effect to such payment, Excess Availability at all times during such period of not less than fifteen (15%) percent of the Loan Limit,

(iv) Administrative Agent shall have received not less than ten (10) Business Days' prior written notice of the proposed acquisition or any investment in excess of \$10,000,000 and such information with respect thereto as Administrative Agent may reasonably request, including (A) the proposed date and amount of the acquisition or investment, (B) a list and description of the assets or Capital Stock to be acquired, or the investment to be made and (C) the total purchase price for the assets or Capital Stock to be purchased (and the terms of payment of such purchase price) or the total amount of such investment (and the terms of the payment for such investment) and the consideration to be received in exchange for such investment,

(v) promptly upon Administrative Agent's request, the Borrower or Guarantor purchasing such assets or Capital Stock, or making such investment, shall deliver, or cause to be delivered to Administrative Agent, true, correct and complete copies of all agreements, documents and instruments relating to such acquisition or investment,

(vi) the acquisition or investment shall be with respect to an operating company or division or line of business that engages in a line of business substantially similar, reasonably related or incidental to the business that Borrowers are engaged in,

(vii) the board of directors (or other comparable governing body) of the Person to be acquired shall have duly approved such acquisition and such person shall not have announced that it will oppose such acquisition or shall not have commenced any action which alleges that such acquisition will violate applicable law,

(viii) the assets, Capital Stock or other consideration acquired by any Borrower or Guarantor pursuant to such purchase or investment shall be free and clear of any security interest, mortgage, pledge, lien, charge or other encumbrance (other than those permitted in this Agreement) and Administrative Agent shall have received evidence satisfactory to it of the same,

(ix) the acquisition by any Borrower or Guarantor of such assets or Capital Stock, or the making of such investment, shall not violate any law or regulation or any order or decree of any court or Governmental Authority in any material respect and shall not and will not conflict with or result in the breach of, or constitute a default in any respect under, any material agreement, document or instrument to which such Borrower, or Guarantor or any Affiliate is a party or may be bound, or result in the creation or imposition of, or the obligation to grant, any lien, charge or encumbrance upon any of the property of such Borrower, or Guarantor or any Affiliate or violate any provision of the certificate of incorporation, by-laws, certificate of

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formation, operating agreement or other organizational documentation of such Borrower or Guarantor,

(x) such purchase or investment shall be in a bonafide arms' length transaction with a person that is not an Affiliate of any Borrower or Guarantor,

(xi) no Borrower or Guarantor shall become obligated with respect to any Indebtedness, nor any of its property become subject to any security interest or lien, pursuant to such acquisition or investment unless such Borrower or Guarantor could incur such Indebtedness or create such security interest or lien hereunder or under the other Financing Agreements,

(xii) Administrative Agent shall have received, in form and substance satisfactory to Administrative Agent, (A) evidence that Administrative Agent has valid and perfected security interests in and liens upon all purchased assets to the extent such assets constitute Collateral hereunder, (B) UCC financing statements (or other similar registrations required in any foreign jurisdiction), (C) all Collateral Access Agreements and other consents, waivers, acknowledgments and other agreements from third persons which Administrative Agent may reasonably deem necessary or desirable in order to permit, protect and perfect its security interests in and liens upon the assets purchased, (D) the agreement of the seller consenting to the collateral assignment by the Borrower or Guarantor purchasing such assets of all rights and remedies and claims for damages of such Borrower or Guarantor relating to the Collateral under the agreements, documents and instruments relating to such acquisition and (E) such other agreements, documents and instruments as Administrative Agent may request in connection therewith,

(xiii) in no event shall any Accounts, Inventory, Military Receivables, Equipment, Real Property, Rolling Stock or Prescription Files so acquired by any Borrower pursuant to such acquisition be deemed Eligible Accounts, Eligible Inventory, Eligible Military Receivables, Eligible Equipment, Eligible Real Property, Eligible Rolling Stock or Eligible Prescription Files, respectively, unless and until Administrative Agent shall have conducted a field examination with respect thereto (and at Administrative Agent's option, at Borrowers' expense, obtained an appraisal of such Inventory, Equipment, Real Property, Rolling Stock or Prescription Files by an appraiser reasonably acceptable to Administrative Agent and in form, scope and methodology reasonably acceptable to Administrative Agent and addressed to Administrative Agent and upon which Administrative Agent is expressly permitted to rely, which appraisal shall be in addition to any appraisals which Administrative Agent may obtain pursuant to its rights under Sections 7.3, 7.4, 7.5 or 7.6 hereof) (provided, that, notwithstanding the foregoing, no field examination or appraisal shall be required with respect to (A) such acquired Inventory of the same or similar type as owned by Borrowers prior to such acquisition so long as the Inventory that is not subject to a field examination and appraisal at any time does not exceed the value of \$32,500,000 in the aggregate and

(B) upon the consummation of the acquisition by Parent of the Capital Stock of Martin's Super Market, Inc., the Accounts acquired and owned by Parent in connection with such acquisition for a period of ninety (90) days after the date of the consummation of such acquisition until the field exam relating to such acquired Accounts has been completed, after which such Accounts shall again be subject to the requirements set forth above with respect to field examinations) and then only to the extent the criteria for Eligible Accounts, Eligible Inventory, Eligible Equipment, Eligible Real Property or

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Eligible Prescription Files set forth herein are satisfied with respect thereto in accordance with this Agreement (or such other or additional criteria as Administrative Agent may, at its option, establish with respect thereto in accordance with this Agreement and subject to such Reserves as Administrative Agent may establish in accordance with this Agreement), and upon the request of Administrative Agent, the Accounts, Inventory, Equipment, Real Property or Prescription Files acquired by such Borrower or Guarantor pursuant to such acquisition shall at all times after such acquisition be separately identified and reported (until they are added to Parent's existing systems, policies and procedures) to Administrative Agent in a manner satisfactory to Administrative Agent;

(k) the loans and advances set forth on Schedule 9.10 to the Information Certificate; provided, that, as to such loans and advances, (i) Borrowers and Guarantors shall not, directly or indirectly, amend, modify, alter or change the terms of such loans and advances or any agreement, document or instrument related thereto, except that so long as no Default or Event of Default shall exist or have occurred, Borrowers and Guarantors may amend such terms to: (A) extend the term thereof for up to an additional twelve (12) months from the current term thereof or such longer period as Administrative Agent may agree, (B) increase the amount or frequency of the payments required from the payee thereunder, (C) obtain any collateral in respect of such loans, or (D) otherwise make the terms thereof more favorable to Borrowers and Guarantors and (ii) Borrowers and Guarantors shall furnish to Administrative Agent all notices or demands in connection with such loans and advances either received by any Borrower or Guarantor or on its behalf, promptly after the receipt thereof, or sent by any Borrower or Guarantor or on its behalf, concurrently with the sending thereof, as the case may be;

(l) investments in the ordinary course of business of Borrowers not otherwise permitted in Section 9.10 hereof, provided, that, the aggregate amount of all such investments shall not exceed \$5,000,000 in any fiscal year;

(m) the purchase or repurchase by Parent of Indebtedness evidenced by the Senior Notes to the extent permitted in Section 9.9(l) hereof; and

(n) investments by Borrowers not otherwise subject to the terms of this Section 9.10, provided, that, as to any such investment, on the date thereof, and after giving effect thereto: (i) no Default or Event of Default exists or has occurred and is continuing, or would occur or exist after giving effect to such payment, (ii) such investment is not in violation of applicable law or any other agreement to which Parent or any of its Subsidiaries is a party or by which Parent or any of its Subsidiaries is bound, (iii) so long as the aggregate amount of all payments in respect of such investments are less than \$25,000,000 in any twelve (12) consecutive month period, no Cash Dominion Event shall exist, (iv) on and after such time that the aggregate amount of all payments in respect of such investments equal or exceed \$25,000,000 in any twelve (12) consecutive month period, (A) the daily average of the Excess Availability for the immediately preceding ninety (90) consecutive day period shall have been not

less than fifteen (15%) percent of the Loan Limit and after giving effect to any such payment in respect thereof, on a pro forma basis using the Total Borrowing Base as of the date of the most recent calculation of the Total Borrowing Base immediately prior to any such payment, the Excess Availability shall be not less than fifteen (15%) percent of the Loan Limit and (B) Administrative Agent shall have received projections reasonably satisfactory to it for the twelve

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(12) month period after the date of any such payment showing, on a pro forma basis after giving effect to such payment, Excess Availability at all times during such period of not less than fifteen (15%) percent of the Loan Limit, and (v) Administrative Agent shall have received not less than ten (10) Business Days prior written notice of the proposed investment and such information with respect thereto as Administrative Agent may reasonably request, including the proposed date and the amount of such investment.

**17.11 Dividends and Redemptions.** Each Borrower and Guarantor shall not, directly or indirectly, declare or pay any dividends on account of any shares of class of any Capital Stock of such Borrower or Guarantor now or hereafter outstanding, or set aside or otherwise deposit or invest any sums for such purpose, or redeem, retire, defease, purchase or otherwise acquire any shares of any class of Capital Stock (or set aside or otherwise deposit or invest any sums for such purpose) for any consideration or apply or set apart any sum, or make any other distribution (by reduction of capital or otherwise) in respect of any such shares or agree to do any of the foregoing, ~~except that:~~

(a) any Borrower or Guarantor may declare and pay such dividends or redeem, retire, defease, purchase or otherwise acquire any shares of any class of Capital Stock for consideration in the form of shares of common stock (so long as after giving effect thereto no Change of Control or other Default or Event of Default shall exist or occur);

(b) Borrowers and Guarantors may pay dividends to the extent permitted in Section 9.12 below;

(c) any Subsidiary of a Borrower or Guarantor may pay dividends to a Borrower;

(d) Borrowers and Guarantors may repurchase Capital Stock consisting of common stock held by employees pursuant to any employee stock ownership plan thereof upon the termination, retirement or death of any such employee in accordance with the provisions of such plan, provided, that, as to any such repurchase, each of the following conditions is satisfied: (i) as of the date of the payment for such repurchase and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, (ii) such repurchase shall be paid with funds legally available therefor, (iii) such repurchase shall not violate any law or regulation or the terms of any indenture, agreement or undertaking to which such Borrower or Guarantor is a party or by which such Borrower or Guarantor or its or their property are bound, and (iv) the aggregate amount of all payments for such repurchases in any calendar year shall not exceed \$500,000;

(e) Parent may from time to time purchase shares of its Capital Stock to make available to employees (i) participating in the Associate Stock Purchase Plan of Parent who have elected to purchase such shares in accordance with such plan that are to be paid for by such employees with payroll deductions (at a price and otherwise on terms specified in the plan) and (ii) as performance bonuses included in the compensation for such employees in the ordinary course of the business of Borrowers

and Guarantors, provided, that, the aggregate amount of all payments for such purchases of shares for such purpose in any calendar year shall not exceed \$1,000,000; and

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(f) Parent may pay cash dividends and distributions, from legally available funds therefor, to its stockholders and repurchase any shares of its Capital Stock now or hereafter outstanding; provided, that, at the time of payment of each such dividend, distribution or repurchase and after giving effect to the payment thereof: (i) no Default or Event of Default exists or has occurred and is continuing, or would occur or exist after giving effect to such payment, (ii) such dividend, distribution or repurchase is not in violation of applicable law or any other agreement to which Parent is a party or by which Parent is bound, (iii) so long as the aggregate amount of all such payments, together with the aggregate amount of payments permitted under Section 9.9(l), are less than \$35,000,000 in any twelve (12) consecutive month period, no Cash Dominion Event shall exist, (iv) on and after such time that the aggregate amount of all such payments, together with the aggregate amount of payments permitted under Section 9.9(l), exceed \$35,000,000 in any twelve (12) consecutive month period, (A) the daily average of the Excess Availability for the immediately preceding ninety (90) consecutive day period shall have been not less than fifteen (15%) percent of the Loan Limit and after giving effect to any such payment in respect thereof, on a pro forma basis using the Total Borrowing Base as of the date of the most recent calculation of the Total Borrowing Base immediately prior to any such payment, the Excess Availability shall be not less than fifteen (15%) percent of the Loan Limit and (B) Administrative Agent shall have received projections reasonably satisfactory to it for the twelve (12) month period after the date of any such payment showing, on a pro forma basis after giving effect to such payment, Excess Availability at all times during such period of not less than fifteen (15%) percent of the Loan Limit, and (v) Administrative Agent shall have received not less than ten (10) Business Days prior written notice of the proposed dividend, distribution or repurchase and such information with respect thereto as Administrative Agent may reasonably request, including the proposed date and the amount of such dividend, distribution or repurchase.

**17.12 Transactions with Affiliates.** Each Borrower and Guarantor shall not, directly or indirectly:

(a) purchase, acquire or lease any property from, or sell, transfer or lease any property to, any officer, director or other Affiliate of such Borrower or Guarantor, except in the ordinary course of and pursuant to the reasonable requirements of such Borrower's or Guarantor's business (as the case may be) and upon fair and reasonable terms no less favorable to such Borrower or Guarantor than such Borrower or Guarantor would obtain in a comparable arm's length transaction with an unaffiliated person, provided that (i) one Borrower may make sales of goods, or render services, to another Borrower on terms more favorable to the Borrower purchasing such goods or receiving the benefit of such services than it would to a person that is not an Affiliate in the ordinary course of business and consistent with the current practices of Borrowers as of the Effective Date, and (ii) Parent may make charitable contributions to an Affiliate that is a foundation qualified under Section 501(c)(3) of the Code so long as on the date of any such charitable contribution and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing;

(b) make any payments (whether by dividend, loan or otherwise) of management, consulting or other fees for management or similar services, or of any

Indebtedness owing to any officer, employee, shareholder, director or any other Affiliate of such Borrower or

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Guarantor, except reasonable compensation to officers, employees and directors for services rendered to such Borrower or Guarantor in the ordinary course of business; and

(c) make loans and investments between or among any Borrower or any Guarantor and their Affiliates other than those permitted under Section 9.10 hereof.

**17.13 Flood Insurance Compliance.** Notwithstanding anything to the contrary contained herein or any of the other Financing Agreements, any increase in the Maximum Credit, extension of the maturity date hereof or renewal of this Agreement that the Administrative Agent and Lenders may agree to, in their sole discretion, after the date hereof shall be subject to such flood insurance due diligence and compliance with flood insurance requirements reasonably satisfactory to Administrative Agent and Lenders. After the date hereof, either Administrative Agent or Borrowers shall provide Lenders with not less than forty-five (45) days written notice prior to any Real Property acquired by Borrowers after the date hereof becoming subject to a Mortgage in favor of Administrative Agent and such Real Property shall be subject to such Mortgage only after the Lenders have confirmed to Administrative Agent that flood insurance due diligence and compliance with flood insurance requirements has been completed in a manner reasonably satisfactory to Lenders.

**17.14 End of Fiscal Years; Fiscal Quarters.** Each Borrower and Guarantor shall, for financial reporting purposes, cause its, and each of its Subsidiaries' (a) fiscal years to end on the dates for the end of each such fiscal year set forth on Schedule 9.14 hereto and (b) fiscal quarters to end on the dates for the end of each such fiscal quarter set forth in Schedule 9.14 hereto.

**17.15 Credit Card Agreements.** Each Borrower shall (a) observe and perform all material terms, covenants, conditions and provisions of the Credit Card Agreements to be observed and performed by it at the times set forth therein; and (b) at all times maintain in full force and effect the Credit Card Agreements and not terminate, cancel, surrender, modify, amend, waive or release any of the Credit Card Agreements, or consent to or permit to occur any of the foregoing; except, that, (i) any Borrower may terminate or cancel any of the Credit Card Agreements in the ordinary course of the business of such Borrower; provided, that, such Borrower shall give Administrative Agent not less than fifteen (15) days prior written notice of its intention to so terminate or cancel any of the Credit Card Agreements; (d) not enter into any new Credit Card Agreements with any new Credit Card Issuer unless (i) Administrative Agent shall have received not less than thirty (30) days prior written notice of the intention of such Borrower to enter into such agreement (together with such other information with respect thereto as Administrative Agent may request) and (ii) such Borrower delivers, or causes to be delivered to Administrative Agent, a Credit Card Acknowledgment in favor of Administrative Agent, (e) give Administrative Agent immediate written notice of any Credit Card Agreement entered into by such Borrower after the Effective Date, together with a true, correct and complete copy thereof and such other information with respect thereto as Administrative Agent may request; and (f) furnish to Administrative Agent, promptly upon the request of Administrative Agent, such information and evidence as Administrative Agent may require from time to time concerning the observance, performance and compliance by such Borrower or the other party or parties thereto with the terms, covenants or provisions of the Credit Card Agreements.

**17.16 Change in Business.** Each Borrower and Guarantor shall not engage in any business other than the business of such Borrower or Guarantor on the Effective Date (after giving effect to the Nash-Finch Merger) and any business reasonably related, ancillary or complimentary to the business in which such Borrower or Guarantor is engaged on the Effective Date.

**17.17 Limitation of Restrictions Affecting Subsidiaries.** Each Borrower and Guarantor shall not, directly, or indirectly, create or otherwise cause or suffer to exist any encumbrance or restriction which prohibits or limits the ability of any Subsidiary of such Borrower or Guarantor to (a) pay dividends or make other distributions or pay any Indebtedness owed to such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor; (b) make loans or advances to such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor, (c) transfer any of its properties or assets to such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor; or (d) create, incur, assume or suffer to exist any lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than encumbrances and restrictions arising under (i) applicable law, (ii) this Agreement, (iii) the documents governing the Qualified Debt Offering (if applicable), (iv) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor, (v) customary restrictions on dispositions of real property interests found in reciprocal easement agreements of such Borrower or Guarantor or any Subsidiary of such Borrower or Guarantor, (vi) any agreement relating to permitted Indebtedness incurred by a Subsidiary of such Borrower or Guarantor prior to the date on which such Subsidiary was acquired by such Borrower or such Guarantor and outstanding on such acquisition date, (vii) the extension or continuation of contractual obligations in existence on the Effective Date; provided, that, any such encumbrances or restrictions contained in such extension or continuation are no less favorable to Administrative Agent and Lenders than those encumbrances and restrictions under or pursuant to the contractual obligations so extended or continued, and (viii) the Senior Note Indenture (as in effect on December 6, 2012).

**17.18 Financial Covenants.**

(a) [Reserved].

(b) **Minimum Fixed Charge Coverage Ratio.** At any time that (and for so long as) Excess Availability is less than the greater of (i) an amount equal to ten (10%) percent of the Total Borrowing Base and (ii) \$80,000,000 (a "Financial Covenant Triggering Event"), the Fixed Charge Coverage Ratio of Borrowers (on a combined basis) for the most recently ended twelve (12) month period for which Administrative Agent has received financial statements of Borrowers (commencing with the most recently ended twelve (12) month period immediately preceding the date on which a Financial Covenant Triggering Event first occurs for which Administrative Agent has received financial statements of Borrowers) and for each twelve (12) month period thereafter for which Administrative Agent has received financial statements of Borrowers shall be greater than 1.00 to 1:00. To the extent that a Financial Covenant Triggering Event has occurred, if Excess Availability shall thereafter be equal to or greater than the greater of (i) an amount equal to ten (10%) percent of the Total Borrowing Base and (ii) \$80,000,000 for at least thirty (30) consecutive days, then the Financial Covenant Triggering Event shall no

longer be deemed to exist or be continuing until such time as Excess Availability is again less than such amount referenced above.

#### 17.19 License Agreements.

(a) With respect to a License Agreement (which constitutes a Material Contract) applicable to Intellectual Property that is owned by a third party and licensed to a Borrower or Guarantor and that is affixed to or otherwise used in connection with the manufacture, sale or distribution of any Inventory (other than an off-the-shelf product with a shrink wrap license), each Borrower and Guarantor shall (i) give Administrative Agent not less than ninety (90) days prior written notice of its intention to not renew or to terminate, cancel, surrender or release its rights under any such License Agreement, or to amend any such License Agreement or related arrangements to limit the scope of the right of such Borrower or Guarantor to use the Intellectual Property subject to such License Agreement in any material respect, either with respect to product, territory, term or otherwise, or to increase in any material respect the amounts to be paid by such Borrower or Guarantor thereunder or in connection therewith (and Administrative Agent may establish such Reserves as a result of any of the foregoing as Administrative Agent may reasonably determine), (ii) give Administrative Agent prompt written notice of any such License Agreement entered into by such Borrower or Guarantor after the Effective Date, or any material amendment to any such License Agreement existing on the Effective Date, in each case together with a true, correct and complete copy thereof and such other information with respect thereto as Administrative Agent may in good faith request, (iii) give Administrative Agent prompt written notice of any material breach of any obligation, or any default, by the third party that is the licensor or by the Borrower or Guarantor that is the licensee or any other party under any such License Agreement, and deliver to Administrative Agent (promptly upon the receipt thereof by such Borrower or Guarantor in the case of a notice to such Borrower or Guarantor and concurrently with the sending thereof in the case of a notice from such Borrower or Guarantor) a copy of each notice of default and any other notice received or delivered by such Borrower or Guarantor in connection with any such a License Agreement that relates to the scope of the right, or the continuation of the right, of such Borrower or Guarantor to use the Intellectual Property subject to such License Agreement or the amounts required to be paid thereunder.

(b) With respect to a License Agreement (which constitutes a Material Contract) applicable to Intellectual Property that is owned by a third party and licensed to a Borrower or Guarantor and that is affixed to or otherwise used in connection with the manufacture, sale or distribution of any Inventory (other than an off-the-shelf product with a shrink wrap license), at any time an Event of Default shall exist or have occurred and be continuing or if after giving effect to any Reserves, or the reduction in the applicable Borrowing Base as a result of Eligible Inventory using such licensed Intellectual Property ceasing to be Eligible Inventory, the aggregate amount of the Excess Availability of Borrowers is less than \$5,000,000, Administrative Agent shall have, and is hereby granted, the irrevocable right and authority, at its option, to renew or extend the term of such License Agreement, whether in its own name and behalf, or in the name and behalf of a designee or nominee of Administrative Agent or in the name and behalf of such Borrower or Guarantor, subject to and in accordance with the terms of such License Agreement. Administrative Agent may, but shall not be required to, perform any or all of such obligations of such Borrower or Guarantor under any of the License Agreements.

including, but not limited to, the payment of any or all sums due from such Borrower or Guarantor thereunder. Any sums so paid by Administrative Agent shall constitute part of the Obligations.

17.20 Agricultural Products.

(a) Each Borrower shall at all times comply in all material respects with all existing and future Food Security Act Notices during their periods of effectiveness under the Food Security Act, including, without limitation, directions to make payments to the Farm Products Seller by issuing payment instruments directly to the secured party with respect to any assets of the Farm Products Seller or jointly payable to the Farm Products Seller and any secured party with respect to the assets of such Farm Products Seller, as specified in the Food Security Act Notice, so as to terminate or release the security interest in any Farm Products maintained by such Farm Products Seller or any secured party with respect to the assets of such Farm Products Seller under the Food Security Act.

(b) Each Borrower shall take all other actions as may be reasonably required, if any, to ensure that any perishable agricultural commodity (in whatever form) or other Farm Products are purchased free and clear of any security interest, lien or other claims in favor of any Farm Products Seller or any secured party with respect to the assets of any Farm Products Seller.

(c) Each Borrower shall promptly notify Administrative Agent in writing after receipt by or on behalf of such Borrower of any Food Security Act Notice or amendment to a previous Food Security Act Notice, and including any notice from any Farm Products Seller of the intention of such Farm Products Seller to preserve the benefits of any trust applicable to any assets of any Borrower or Guarantor under the provisions of the PSA, PACA or any other statute and such Borrower shall promptly provide Administrative Agent with a true, correct and complete copy of such Food Security Act Notice or amendment, as the case may be, and other information delivered to or on behalf of such Borrower pursuant to the Food Security Act.

(d) In the event any Borrower receives a Food Security Act Notice, such Borrower shall pay the related invoice within the payment terms specified therein and notify Administrative Agent of such receipt; provided, that, such invoice may remain unpaid if, and only so long as (i) appropriate legal or administrative action has been commenced in good faith and is being diligently pursued or defended by such Borrower, (ii) adequate reserves with respect to such contest are maintained on the books of such Borrower, in accordance with GAAP, (iii) Administrative Agent shall have established a Reserve in an amount at least equal to the amount claimed to be due by such vendor under the relevant invoice, (iv) such Borrower shall promptly pay or discharge such contested invoice and all additional charges, interest, penalties and expenses, if any, and shall deliver to Administrative Agent evidence reasonably acceptable to Administrative Agent of such payment, if such contest is terminated or discontinued adversely to Borrower or the conditions set forth in this Section 9.20(d) are no longer met.

(e) Each Borrower shall obtain Administrative Agent's written consent prior to purchasing any Farm Products from a Person who produces such Farm Products in a state with a central filing system certified by the United States Secretary of Agriculture, and in the event that such Borrower receives such consent, such Borrower shall immediately register, as a buyer, with

the Secretary of State of such state (or the designated system operator). Each Borrower shall forward promptly to Administrative Agent a copy of such registration as well as a copy of all relevant portions of the master list periodically distributed by any such Secretary of State (or the designated system operator). Each Borrower shall comply with any payment of obligations in connection with the purchase of any Farm Products imposed by a secured party as a condition of the waiver or release of a security interest effective under the Food Security Act or other applicable law whether or not as a result of direct notice or the filing under any applicable central filing system. Each Borrower shall also provide to Administrative Agent not later than the fifth (5<sup>th</sup>) day of each month, true and correct copies of all state filings recorded in any such central filing system in respect of a Person from whom a Borrower has purchased Farm Products within the preceding twelve (12) months.

**17.21 After Acquired Real Property.** If any Borrower or Guarantor hereafter acquires any Real Property, fixtures or any other property that is of the kind or nature described in the Mortgages and such Real Property, fixtures or other property is adjacent to, contiguous with or necessary or related to or used in connection with any Real Property then subject to a Mortgage, or if such Real Property is not adjacent to, contiguous with or related to or used in connection with such Real Property, then if such Real Property, fixtures or other property at any location (or series of adjacent, contiguous or related locations, and regardless of the number of parcels) has a fair market value in an amount equal to or greater than \$2,500,000 (or if a Default or Event of Default exists, then regardless of the fair market value of such assets), without limiting any other rights of Administrative Agent or any Lender, or duties or obligations of any Borrower or Guarantor, promptly upon Administrative Agent's request, such Borrower or Guarantor shall execute and deliver to Administrative Agent a mortgage, deed of trust or deed to secure debt, as Administrative Agent may determine, in form and substance substantially similar to the Mortgages and as to any provisions relating to specific state laws satisfactory to Administrative Agent and in form appropriate for recording in the real estate records of the jurisdiction in which such Real Property or other property is located granting to Administrative Agent a first and only lien and mortgage on and security interest in such Real Property, fixtures or other property (except as such Borrower or Guarantor would otherwise be permitted to incur hereunder or under the Mortgages or as otherwise consented to in writing by Administrative Agent) and such other agreements, documents and instruments as Administrative Agent may require in connection therewith.

**17.22 Costs and Expenses.** Borrowers and Guarantors shall pay to Administrative Agent, Issuing Bank, Swing Line Lender and Lenders on demand all out-of-pocket costs, expenses, filing fees and taxes paid or payable in connection with the preparation, negotiation, execution, delivery, recording, syndication, administration, collection, liquidation, enforcement and defense of the Obligations, Administrative Agent's rights in the Collateral, this Agreement, the other Financing Agreements and all other documents related hereto or thereto, including any amendments, supplements or consents which may hereafter be contemplated (whether or not executed) or entered into in respect hereof and thereof, including: (a) all costs and expenses of filing or recording (including Uniform Commercial Code financing statement filing taxes and fees, documentary taxes, intangibles taxes and mortgage recording taxes and fees, if applicable); (b) costs and expenses and fees for insurance premiums, environmental audits, title insurance premiums, surveys, assessments, engineering reports and inspections, appraisal fees and search

fees (including OFAC/PEP searches), costs and expenses of remitting loan proceeds, collecting checks and other items of payment, and establishing and maintaining the Blocked Accounts, together with Administrative Agent's customary charges and fees with respect thereto; (c) charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations; (d) costs and expenses of preserving and protecting the Collateral; (e) costs and expenses paid or incurred in connection with obtaining payment of the Obligations, enforcing the security interests and liens of Administrative Agent, selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of this Agreement and the other Financing Agreements or defending any claims made or threatened against Administrative Agent or any Lender arising out of the transactions contemplated hereby and thereby (including preparations for and consultations concerning any such matters); (f) all fees and charges, together with out-of-pocket expenses and costs, heretofore and from time to time hereafter incurred by Administrative Agent during the course of periodic field examinations of the Collateral and such Borrower's or Guarantor's operations; and (g) the reasonable fees and disbursements of counsel (including legal assistants) to Administrative Agent in connection with any of the foregoing.

**17.23 Foreign Assets Control Regulations, Etc.** None of the requesting or borrowing of the Loans or the requesting or issuance, extension or renewal of any Letter of Credit Accommodations or the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. §1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (including, but not limited to (a) Executive order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Patriot Act. Neither any Borrower nor any of its Subsidiaries or other Affiliates is or will become a Sanctioned Entity or Sanctioned Person as described in the Executive Order, the Trading with the Enemy Act or the Foreign Assets Control Regulations or engages or will engage in any dealings or transactions, or be otherwise associated, with any such Sanctioned Entity or Sanctioned Person. No part of the proceeds of the Loans made hereunder will be used by any Borrower or Guarantor or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

**17.24 Formation of Subsidiaries.** At the time that any Borrower or Guarantor forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date (other than Fresh City Market, LLC, unless any Borrower or Guarantor, directly or indirectly, owns sixty-six (66%) percent or more of its Capital Stock), Lead Borrower shall (a) within fifteen (15) days of such formation or acquisition (or such later date as permitted by Administrative Agent in its sole discretion) cause any such new Subsidiary to provide to Administrative Agent a Joinder Agreement, together with a joinder to the Guarantee or any other security document (including mortgages with respect to any Real Property owned in fee of such new Subsidiary with a fair market value of at least \$2,500,000), as well as appropriate financing statements (and with respect to all property subject to a mortgage, fixture filings), all in form and

substance reasonably satisfactory to Administrative Agent (including being sufficient to grant Administrative Agent a first priority Lien (subject to liens permitted under Section 9.8 herein) in and to the assets of such newly formed or acquired Subsidiary); provided, that, such joinders and security documents shall not be required to be provided to Administrative Agent with respect to any Subsidiary of Borrowers that is a controlled foreign corporation if providing such documents would result in material adverse tax consequences, (b) within ten (10) days of such formation or acquisition (or such later date as permitted by Administrative Agent in its sole discretion) provide to Administrative Agent a pledge agreement and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary reasonably satisfactory to Administrative Agent; provided, that, only sixty-five (65%) percent of the total outstanding voting Capital Stock of any Subsidiary of any Borrower that is a controlled foreign corporation (and none of the Capital Stock of any Subsidiary of such controlled foreign corporation) shall be required to be pledged if pledging a greater amount would result in adverse tax consequences or the costs to the Borrowers of providing such pledge or perfecting the security interests created thereby are unreasonably excessive (as determined by Administrative Agent in consultation with Lead Borrower) in relation to the benefits of Administrative Agent and the Lenders of the security or guarantee afforded thereby (which pledge, if reasonably requested by Administrative Agent, shall be governed by the laws of the jurisdiction of such Subsidiary), and (c) within ten (10) days of such formation or acquisition (or such later date as permitted by Administrative Agent in its sole discretion) provide to Administrative Agent all other documentation, including one or more opinions of counsel reasonably satisfactory to Administrative Agent, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance or other documentation with respect to all Real Property owned in fee and subject to a mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 9.24 shall be a Financing Agreement. Notwithstanding anything to the contrary set forth above, (i) Fresh City Market, LLC shall not be required to be a Guarantor so long as it does not have assets with a book value in excess of \$25,000,000 and no Borrower or Guarantor owns more than eighty-two (82%) percent of the Capital Stock of it and (ii) Whitton Enterprises, Inc. shall not be required to be a Borrower or Guarantor so long as it is liquidated and dissolved in accordance with applicable law no later than June 30, 2015.

**17.25 Further Assurances.** At the request of Administrative Agent at any time and from time to time, Borrowers and Guarantors shall, at their expense, duly execute and deliver, or cause to be duly executed and delivered, such further agreements, documents and instruments, and do or cause to be done such further acts as may be necessary or proper to evidence, perfect, maintain and enforce the security interests and the priority thereof in the Collateral and to otherwise effectuate the provisions or purposes of this Agreement or any of the other Financing Agreements. Administrative Agent may at any time and from time to time request a certificate from an officer of any Borrower or Guarantor representing that all conditions precedent to the making of Loans and providing Letter of Credit Accommodations contained herein are satisfied. In the event of such request by Administrative Agent, Administrative Agent and Lenders may, at Administrative Agent's option, cease to make any further Loans or provide any further Letter of Credit Accommodations until Administrative Agent has received such certificate and, in addition, Administrative Agent has determined that such conditions are satisfied. Promptly following any request therefor, Agent shall have received from Borrowers information and

documentation reasonably requested by the Administrative 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 and the Beneficial Ownership Regulation. Each Borrower and each Guarantor will, and will cause each Subsidiary to, provide such information and take such actions as are reasonably requested by Administrative Agent or any Lender in order to assist Administrative Agent and the Lenders in maintaining compliance with anti-money laundering laws and regulations.

**17.26 Post-Closing Matters.** Each Borrower will execute and deliver the documents and take such actions as are set forth on Schedule 9.26 hereto, in each case, within the time limits specified on such schedule (or such longer period as Administrative Agent may, in its Permitted Discretion, agree).

**17.27 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.** Each Borrower and each Guarantor will, and will cause each of its Subsidiaries to comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each Borrower, each Guarantor and each of their respective Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by each Borrower, each Guarantor and each of their respective Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

## **SECTION 18. EVENTS OF DEFAULT AND REMEDIES**

**18.1 Events of Default.** The occurrence or existence of any one or more of the following events are referred to herein individually as an “Event of Default”, and collectively as “Events of Default”:

(a) (i) any Borrower fails to pay any principal amount of the Obligations when due and any other Obligations within three (3) Business Days of the date when due or (ii) any Borrower or Obligor fails to perform any of the covenants contained in Sections 9.2, 9.3, 9.4, 9.13, 9.14, 9.15, 9.16, 9.17, 9.19, 9.20 and 9.21 of this Agreement and such failure shall continue for ten (10) days; provided, that, such ten (10) day period shall not apply in the case of: (A) any failure to observe any such covenant which is not capable of being cured at all or within such ten (10) day period or which has been the subject of a prior failure within a six (6) month period or (B) an intentional breach by any Borrower or Obligor of any such covenant or (iii) any Borrower or Obligor fails to perform any of the terms, covenants, conditions or provisions contained in this Agreement other than those described in Sections 10.1(a)(i) and 10.1(a)(ii) above;

(b) any representation, warranty or statement of fact made by any Borrower or Guarantor to Administrative Agent in this Agreement, the other Financing Agreements or any other written agreement, schedule, confirmatory assignment or otherwise delivered in connection with this Agreement or any of the other Financing Agreements shall when made or deemed made be false or misleading in any material respect;

(c) any Obligor revokes or terminates or purports to revoke or terminate prior to the stated expiration any guarantee, endorsement or other agreement of such party in favor of

Administrative Agent or any Lender other than termination as a result of such Obligor ceasing to be an Obligor as permitted by this Agreement;

(d) any judgment for the payment of money is rendered against any Borrower or Obligor in excess of \$50,000,000 in any one case or in the aggregate (to the extent not covered by insurance as to which the insurer has been notified of the potential claim and does not dispute or decline such coverage) and shall remain unsatisfied, undischarged or unvacated for a period in excess of thirty (30) consecutive days during which execution shall not be effectively stayed, or any judgment other than for the payment of money, or an injunction, attachment, garnishment or execution is rendered against any Borrower or Obligor or any of the Collateral having a value in excess of \$50,000,000;

(e) any Borrower or Obligor makes an assignment for the benefit of creditors;

(f) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed against any Borrower or Obligor or all or any material part of the properties of Borrowers (taken as a whole) and such petition or application is not dismissed within forty-five (45) days after the date of its filing or any Borrower or Obligor shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of, any such action or proceeding or the relief requested is granted sooner;

(g) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at a law or equity) is filed by any Borrower or Obligor or for all or any material part of the properties of Borrowers (taken as a whole);

(h) any default by any Borrower or any Obligor under any agreement, document or instrument relating to any Indebtedness for borrowed money owing to any person other than Lenders, or any capitalized lease obligations, contingent indebtedness in connection with any guarantee, letter of credit, indemnity or similar type of instrument in favor of any person other than Lenders, in any case in an amount in excess of \$30,000,000, which default continues for more than the applicable cure period, if any, with respect thereto and is not waived in writing, or any Credit Card Issuer or Credit Card Processor withholds payment of amounts otherwise payable to a Borrower to fund a reserve account or otherwise hold as collateral, or shall require a Borrower to pay funds into a reserve account or for such Credit Card Issuer or Credit Card Processor to otherwise hold as collateral, or any Borrower shall provide a letter of credit, guarantee, indemnity or similar instrument to or in favor of such Credit Card Issuer or Credit Card Processor such that in the aggregate all of such funds in the reserve account, other amounts held as collateral and the amount of such letters of credit, guarantees, indemnities or similar instruments shall exceed \$20,000,000;

(i) (x) any Credit Card Issuer from whom sales made by Borrowers and Guarantors through credit cards issued by such person or persons exceeded five (5%) percent of

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the aggregate retail sales of Borrowers and Guarantors in the immediately preceding fiscal year on a Pro Forma Basis or (y) any Credit Card Processors from whom sales

made by Borrowers and Guarantors that are processed or serviced through such person or persons exceeded five (5%) percent of the aggregate retail sales of Borrowers and Guarantors in the immediately preceding fiscal year on a Pro Forma Basis, shall in either case, send written notice to any Borrower that it is ceasing to make or suspending payments to any Borrower of amounts due or to become due to any Borrower or shall cease or suspend such payments, or shall send written notice to any Borrower that it is terminating its arrangements with any Borrower or such arrangements shall terminate as a result of any event of default under such arrangements, which continues for more than the applicable cure period, if any, with respect thereto, unless such Borrower shall have entered into arrangements with another Credit Card Issuer or Credit Card Processor, as the case may be, within sixty (60) days after the date of any such notice;

(j) any material provision hereof or of any of the other Financing Agreements shall for any reason cease to be valid, binding and enforceable with respect to any party hereto or thereto (other than Administrative Agent) in accordance with its terms, or any such party shall challenge the enforceability hereof or thereof, or shall assert in writing, or take any action or fail to take any action based on the assertion that any provision hereof or of any of the other Financing Agreements has ceased to be or is otherwise not valid, binding or enforceable in accordance with its terms, or any security interest provided for herein or in any of the other Financing Agreements shall cease to be a valid and perfected first priority security interest in any of the Collateral purported to be subject thereto having a value in excess of \$30,000,000 (except as otherwise permitted herein or therein);

(k) an ERISA Event shall occur which results in or could reasonably be expected to have a Material Adverse Effect;

(l) any Change of Control;

(m) the indictment by any Governmental Authority, of any Borrower or Obligor of which any Borrower, Obligor or Administrative Agent receives notice, in either case, as to which there is a reasonable possibility of an adverse determination, in the good faith determination of Administrative Agent, under any criminal statute, or commencement of criminal or civil proceedings against such Borrower or Obligor, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of (i) any of the Collateral having a value in excess of \$30,000,000 or (ii) any other property of any Borrower or Guarantor (other than any Borrower or Guarantor which owns assets with a book value of less than \$10,000,000 and which does not conduct material and profitable sales activities) which is necessary or material to the conduct of its business;

(n) any event shall occur as a result of which (i) operations are suspended or terminated for thirty (30) days or more at any facility of a Borrower used in generating more than thirty (30%) percent of the consolidated revenues of Borrowers for the immediately preceding fiscal year on a Pro Forma Basis, to the extent not covered by insurance as to which the insurer has been notified of the potential claim and does not dispute or decline such coverage (but for this purpose a sale of a facility in accordance with the terms hereof shall not be deemed to be a suspension or termination of operations at such facility), (ii) any law, regulation, order, judgment

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or decree of any Governmental Authority shall exist, or any action, suit, investigation, litigation or proceeding shall be pending or threatened in writing in any court or before any arbitrator or Governmental Authority that could reasonably be expected to result in

the loss of the ability to conduct any portion of the business that accounted for more than thirty (30%) percent of the revenues of Parent and its Subsidiaries (taken as a whole) in the immediately preceding fiscal year on a Pro Forma Basis, or (iii) the loss, suspension, revocation or failure to renew any Permit now held or hereafter acquired by a Borrower required in connection with the sale or distribution of goods the sale of which gave rise to revenues of more than thirty (30%) percent in the immediately preceding fiscal year on a Pro Forma Basis;

(o) except as otherwise expressly permitted hereunder, Borrowers and Guarantors, taken as a whole, shall take any action to suspend the operation of a material portion of their business in the ordinary course;

(p) there occurs any uninsured loss to any material portion of the Collateral, which could reasonably be expected to have a Material Adverse Effect;

(q) any Borrower or Guarantor or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any contract to which it is party or fails to observe or perform any other agreement or condition relating to any such contract to which it is party or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such contract to terminate such contract, in each case which would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(r) except as permitted hereunder, any Borrower or Guarantor (other than any Borrower or Guarantor which owns assets with a book value of less than \$10,000,000 and which does not conduct material and profitable sales activities) dissolves or suspends or discontinues doing business;

(s) (i) the subordination provisions of the documents evidencing or governing any Indebtedness in excess of \$10,000,000 which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Administrative Agent (the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of any such applicable subordinated Indebtedness; or (ii) any Borrower or Guarantor shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Secured Parties, or (C) that all payments of principal of or premium and interest on any such applicable subordinated Indebtedness, or realized from the liquidation of any property of any Borrower or Guarantor, shall be subject to any of the Subordination Provisions;

(t) there shall be an event of default under any of the other Financing Agreements; or

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(u) the repayment by Parent of any of the Senior Notes, and either (i) as of the date of any such payment and after giving effect thereto, the aggregate amount of the Excess Availability of Borrowers for any of the immediately preceding ten (10) consecutive days shall have been less than \$25,000,000 or (ii) as of the date of any such payment and after giving effect thereto, the aggregate amount of the Excess Availability of Borrowers is less than \$25,000,000.

## 18.2 Remedies.

(a) At any time an Event of Default exists or has occurred and is continuing, Administrative Agent and Lenders shall have all rights and remedies provided in this Agreement, the other Financing Agreements, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by any Borrower or Obligor, except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to Administrative Agent and Lenders hereunder, under any of the other Financing Agreements, the UCC or other applicable law, are cumulative, not exclusive and enforceable, in Administrative Agent's discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Borrower or Obligor of this Agreement or any of the other Financing Agreements. Subject to Section 12 hereof, Administrative Agent may, and at the direction of the Required Lenders shall, at any time or times, proceed directly against any Borrower or Obligor to collect the Obligations without prior recourse to the Collateral.

(b) Without limiting the generality of the foregoing, at any time an Event of Default exists or has occurred and is continuing, Administrative Agent may, at its option and shall upon the direction of the Required Lenders, (i) upon notice to Lead Borrower, accelerate the payment of all Obligations (other than Obligations arising pursuant to Bank Products) and demand immediate payment thereof to Administrative Agent for itself and the benefit of Lenders (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(f) and 10.1(g), all Obligations (other than Obligations arising pursuant to Bank Products) shall automatically become immediately due and payable), and (ii) terminate the Commitments and this Agreement (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(f) and 10.1(g), the Commitments and any other obligation of the Administrative Agent or a Lender hereunder shall automatically terminate).

(c) Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, Administrative Agent may, in its discretion, and upon the direction of the Required Lenders, shall (i) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral, (ii) require any Borrower or Obligor, at Borrowers' expense, to assemble and make available to Administrative Agent any part or all of the Collateral at any place and time designated by Administrative Agent, (iii) collect, foreclose, receive, appropriate, setoff and realize upon any and all Collateral, (iv) remove any or all of the Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (v) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including entering into contracts with

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respect thereto, public or private sales at any exchange, broker's board, at any office of Administrative Agent or elsewhere) at such prices or terms as Administrative Agent may deem reasonable, for cash, upon credit or for future delivery, with the Administrative Agent having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of any Borrower or Obligor, which right or equity of redemption is hereby expressly waived and released by Borrowers and Obligors and/or (vi) terminate this Agreement. If any of the

Collateral is sold or leased by Administrative Agent upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Administrative Agent. If notice of disposition of Collateral is required by law, ten (10) days prior notice by Administrative Agent to Lead Borrower designating the time and place of any public sale or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and Borrowers and Obligors waive any other notice. In the event Administrative Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, each Borrower and Obligor waives the posting of any bond which might otherwise be required. At any time an Event of Default exists or has occurred and is continuing, upon Administrative Agent's request, Borrowers will either, as Administrative Agent shall specify, furnish cash collateral to the issuer to be used to secure and fund Administrative Agent's reimbursement obligations to the issuer in connection with any Letter of Credit Accommodations or furnish cash collateral to Administrative Agent for the Letter of Credit Accommodations. Such cash collateral shall be in the amount equal to one hundred five (105%) percent of the amount of the Letter of Credit Accommodations plus the amount of any expenses payable or to become payable in connection therewith through the end of the latest expiration date of such Letter of Credit Accommodations.

(d) At any time or times that an Event of Default exists or has occurred and is continuing, Administrative Agent may, in its discretion, enforce the rights of any Borrower or Obligor against any Account Debtor, secondary obligor or other obligor in respect of any of the Accounts or other Receivables. Without limiting the generality of the foregoing, Administrative Agent may, in its discretion, at such time or times (i) notify any or all Account Debtors, secondary obligors or other obligors in respect thereof that the Receivables have been assigned to Administrative Agent and that Administrative Agent has a security interest therein and Administrative Agent may direct any or all accounts debtors, secondary obligors and other obligors to make payment of Receivables directly to Administrative Agent, (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Receivables or other obligations included in the Collateral and thereby discharge or release the Account Debtor or any secondary obligors or other obligors in respect thereof without affecting any of the Obligations, (iii) demand, collect or enforce payment of any Receivables or such other obligations, but without any duty to do so, and Administrative Agent and Lenders shall not be liable for any failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto and (iv) take whatever other action Administrative Agent may deem necessary or desirable for the protection of its interests and the interests of Lenders. At any time that an Event of Default exists or has occurred and is continuing, at Administrative Agent's request, all invoices and statements sent to any Account Debtor shall state that the Accounts and such other obligations have been assigned to Administrative Agent and are payable directly and only to Administrative

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Agent and Borrowers and Obligors shall deliver to Administrative Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Administrative Agent may require. In the event any Account Debtor returns Inventory when an Event of Default exists or has occurred and is continuing, Borrowers shall, upon Administrative Agent's request, hold the returned Inventory in trust for Administrative Agent, segregate all returned Inventory from all of its other property, dispose of the returned Inventory solely according to Administrative Agent's instructions, and not issue any credits, discounts or allowances with respect thereto without Administrative Agent's prior written consent.

(e) To the extent that applicable law imposes duties on Administrative Agent or any Lender to exercise remedies in a commercially reasonable manner (which duties cannot be waived under such law), each Borrower and Guarantor acknowledges and agrees that it is not commercially unreasonable for Administrative Agent or any Lender (i) to fail to incur expenses reasonably deemed significant by Administrative Agent or any Lender 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 consents of any Governmental Authority or other third party for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors, secondary obligors or other persons obligated on Collateral or to remove liens or encumbrances 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 any Borrower or Guarantor, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire 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 capability 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, (xi) to purchase insurance or credit enhancements to insure Administrative Agent or Lenders against risks of loss, collection or disposition of Collateral or to provide to Administrative Agent or Lenders a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by Administrative Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Administrative Agent in the collection or disposition of any of the Collateral. Each Borrower and Guarantor acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Administrative Agent or any Lender would not be commercially unreasonable in the exercise by Administrative Agent or any Lender of remedies against the Collateral and that other actions or omissions by Administrative Agent or any Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section. Without limitation of the foregoing, nothing contained in this Section shall be construed to grant any rights to any Borrower or Guarantor or to impose any duties on Administrative Agent or Lenders that would

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not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

(f) For the purpose of enabling Administrative Agent to exercise the rights and remedies hereunder, each Borrower and Obligor hereby grants to Administrative Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable at any time an Event of Default shall exist or have occurred and for so long as the same is continuing) without payment of royalty or other compensation to any Borrower or Obligor, to use, assign, license or sublicense any of the trademarks, service-marks, trade names, business names, trade styles, designs, logos and other source of business identifiers and other Intellectual Property and general intangibles now owned or hereafter acquired by any Borrower or Obligor, wherever the same maybe located,

including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

(g) At any time an Event of Default shall exist or have occurred and for so long as the same is continuing, Administrative Agent may apply the cash proceeds of Collateral actually received by Administrative Agent from any sale, lease, foreclosure or other disposition of the Collateral to payment of the Obligations, in whole or in part and in accordance with the terms hereof, whether or not then due. Borrowers and Guarantors shall remain liable to Administrative Agent and Lenders for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including attorneys' fees and expenses.

(h) Without limiting the foregoing, upon the occurrence of a Default or an Event of Default, (i) Administrative Agent and Lenders may, at Administrative Agent's option, and upon the occurrence of an Event of Default at the direction of the Required Lenders, Administrative Agent and Lenders shall, without notice, (A) cease making Loans or arranging for Letter of Credit Accommodations or reduce the lending formulas or amounts of Loans and Letter of Credit Accommodations available to Borrowers and/or (B) terminate any provision of this Agreement providing for any future Loans or Letter of Credit Accommodations to be made by Administrative Agent and Lenders to Borrowers and (ii) Administrative Agent may, at its option, establish such Reserves as Administrative Agent determines, without limitation or restriction, notwithstanding anything to the contrary contained herein.

**SECTION 19. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS;  
GOVERNING LAW**

**19.1 Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.**

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements (except as otherwise provided therein) Joinder and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of Illinois but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of Illinois; Illinois.

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Exhibit 10.21

IN WITNESS WHEREOF, the parties hereto have caused this Joinder to be executed by their respective officers, as of the first date written above.

**LEAD BORROWER PROVIDED:**

SPARTANNASH COMPANY, formerly known as Spartan Stores, Inc.

By: /s/ Bill Jacobs

that Name: only for purposes of Section 4.1(h) of this Agreement, the term "Nash-Finch

Material Adverse Effect" (as defined in the Nash-Finch Merger Agreement as in effect on July 21, 2013 and as delivered to Arrangers) and "Spartan Bill Jacobs  
Title: Treasurer

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Material Adverse Effect" (as defined  
ADMINISTRATIVE AGENT:

WELLS FARGO CAPITAL FINANCE, LLC, as Administrative Agent

By: /s/ Peter Foley  
Name: Peter Foley  
Title: Duly Authorized Signatory

NEW LENDER:

AGFIRST FARM CREDIT BANK, as New Lender

By: /s/ Brandon Waring  
Name: Brandon Waring  
Title: Duly Authorized Signatory

[Lender Joinder Agreement (Spartan)]  
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Exhibit 10.21

Exhibit A  
to  
Joinder Agreement  
Commitments

Lender	Total Commitment	Tranche A Commitment	Tranche A-1 Commitment
Wells Fargo Capital Finance, LLC	\$235,000,000	\$222,500,000	\$12,500,000
Bank of America, N.A.	\$230,000,000	\$217,500,000	\$12,500,000
Fifth Third Bank	\$135,000,000	\$125,000,000	\$10,000,000
BMO Harris Bank, N.A.	\$105,000,000	\$100,000,000	\$5,000,000
JPMorgan Chase Bank, N.A.	\$90,000,000	\$90,000,000	-
U.S. Bank National Association	\$55,000,000	\$55,000,000	-
Compeer Financial, PCA	\$50,000,000	\$50,000,000	-
PNC Bank, National Association	\$40,000,000	\$40,000,000	-
TD Bank, N.A.	\$75,000,000	\$75,000,000	-

Associated Bank, National Association	\$40,000,000	\$40,000,000	-
CoBank, ACB	\$75,000,000	\$75,000,000	-
AgFirst Farm Credit Bank	\$75,000,000	\$75,000,000	
Total	\$1,205,000,000	\$1,165,000,000	\$40,000,000

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Exhibit 10.22

#### EXHIBIT A

#### SEPARATION OF EMPLOYMENT AGREEMENT AND GENERAL RELEASE

This Agreement sets forth the terms of your separation of employment with David Sisk (the "Executive") and SpartanNash Company (the "Company"). If you understand and agree with these terms, please sign in the Nash-Finch Merger Agreement space provided below. If the Executive and the Company sign below, this will be a legally binding document representing the entire agreement between the Executive and the Company regarding the subjects it covers. We will refer to this document as in effect on July 21, 2013 and as delivered to Arrangers) (and whether or not such a Nash-Finch Material Adverse Effect or Spartan Material Adverse Effect, as applicable, has occurred) this "Agreement."

**Termination Date.** Executive's last day of work with the Company will be December 30, 2023.

**Consideration.** The Company will pay Executive:

- a. A lump sum payment of \$984,000 representing 1.5 times your current annual salary plus target annual bonus. Payment shall be governed made in a lump sum payment within 60 days following your termination date:
  - i. Annual Salary: \$410,000
  - ii. Target Bonus @ 60% of Annual Salary: \$246,000

Total of \$656,000 x 1.5 = \$984,000
- b. The 2023 Annual Incentive Plan Bonus is based upon the corporate achievement of the EBITDA goal as approved by the Board of Directors. The Bonus, if approved, shall be paid at the same time as bonuses are paid to other employees of the Company, but not later than two and construed a half months after the end of the fiscal year in accordance which the termination date occurs.
- c. A \$20,286 lump sum payment to reimburse the cost of Executive's retiree medical coverage, in lieu of COBRA plan coverage under the SpartanNash benefit plans. Payment shall be made in a lump sum payment within 60 days following your termination date.
- d. During the 18 month period following the termination date, the Company will continue the Executive's Ayco tax and financial planning benefit offered to the

Executive during his term of employment.

e. A consulting fee in the amount of \$375,000, less applicable taxes, withholdings and other deductions for consulting and transition services related to the Company's military business. Executive agrees to be available for consultation and assistance required by the Company for a 12-month period following the termination date. The consulting fee shall be payable in two (2) installments. The first installment representing seventy percent (70%) of the consulting fee shall be due and payable within 60 days following your termination date, and the second and final installment for the remaining 30 percent (30%) of the consulting fee shall be due on or before December 1st, 2024 based on successful performance of Executive's consulting services.

f. SpartanNash shall pay the household moving expenses incurred in connection with Executive's movement of household goods to Florida, not to exceed \$10,000.

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Exhibit 10.22

g. The Company shall pay any other amounts earned, accrued, and owing but not yet paid and any benefits accrued and due under any applicable benefit plans and programs of the Company ("Accrued Obligations"), regardless of whether the Executive executes or revokes the Release.

**Release of Claims.** In exchange for the payment(s) described in the Consideration clause above, you hereby waive all claims available under federal, state or local law against the Company and the directors, officers, employees, employee benefit plans and agents of the Company arising out of your employment with the laws Company or the termination of that employment, including but not limited to all claims arising under the State Americans with Disabilities Act, the Civil Rights Act of Delaware, regardless 1991, the Employee Retirement Income Security Act, the Equal Pay Act, the Genetic Information Non-discrimination Act, the Family and Medical Leave Act, Section 1981 of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

(b) Borrowers, Guarantors, Administrative Agent and Lenders irrevocably consent and submit to the non-exclusive jurisdiction of the Circuit Court of Cook County, Illinois and the United States District Court Code, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act, the Elliott-Larsen Civil Rights Act, Michigan Persons With Disabilities Civil Rights Act, Michigan Equal Pay Law, Michigan Whistleblower's Protection Act, Michigan Paid Medical Leave Act, Michigan Minimum Wage Law of 1964, Michigan Payment of Wages and Fringe Benefits Law, Michigan Sales Representatives Commission Act, if applicable, Michigan WARN Laws, the Bullard-Plawecki Employee Right to Know Act, the Social Security Number Privacy Act, the Internet Privacy Protection Act, and Michigan Occupational Safety and Health Act, as well as wrongful termination claims, breach of contract claims, discrimination claims, harassment claims, retaliation claims, whistleblower claims (to the fullest extent they may be released under applicable law), defamation or other tort claims, and claims for attorneys' fees and costs. You are not waiving your right to vested benefits under the Northern District written terms of Illinois, whichever Administrative Agent may elect, and waive the retirement plan, claims for

unemployment or workers' compensation benefits, any objection based claims arising after the date on venue or forum non conveniens with respect to any action instituted therein arising under which you sign this Agreement, or claims that are not otherwise waivable under applicable law. In addition, you are not waiving any claim relating to directors' and officers' liability insurance coverage or any right of indemnification under the Company's articles of incorporation and bylaws.

**Medicare Disclaimer.** You represent that you are not a Medicare beneficiary as of the other Financing Agreements or in any way connected with or related or incidental time you enter into this Agreement. To the extent that you are a Medicare beneficiary, you agree to the dealings of the parties hereto in respect of this Agreement or any of the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Administrative Agent and Lenders shall have the right to bring any action or proceeding against any Borrower or Guarantor or its or their property in the courts of any other jurisdiction which Administrative Agent deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against any Borrower or Guarantor or its or their property). contact a Company Human Resources Representative for further instruction.

**(c) Limit on Disclosures** Each Borrower and Guarantor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made. You shall be deemed not disclose or cause to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Administrative Agent's option, by service upon any Borrower or Guarantor in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, such Borrower or Guarantor shall appear in answer to such process, failing which such Borrower or Guarantor shall be deemed in default and judgment may be entered by Administrative Agent against such Borrower or Guarantor for the amount of the claim and other relief requested.

**(d) BORROWERS, GUARANTORS, ADMINISTRATIVE AGENT AND LENDERS EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. BORROWERS, GUARANTORS, ADMINISTRATIVE AGENT AND LENDERS EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY BORROWER, ANY GUARANTOR, ADMINISTRATIVE AGENT OR ANY LENDER MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN**

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**EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**

(e) Administrative Agent, Lenders and the other Secured Parties shall not have any liability to any Borrower or Guarantor (whether in tort, contract, equity or otherwise) for losses suffered by such Borrower or Guarantor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, except to the extent resulting from the gross negligence or willful misconduct of Administrative Agent or a Secured Party as determined by a final and non-appealable judgment or court order binding on Administrative Agent, such Lender or other Secured Party. In any such litigation, Administrative Agent, Lenders and the other Secured Parties shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of disclosed the terms of this Agreement. Each Borrower and Guarantor: (i) certifies that neither Administrative Agent, any Lender nor any representative, agent or attorney acting for or on behalf of Administrative Agent or any Lender has represented, expressly or otherwise, that Administrative Agent and Lenders would not, in the event of litigation, seek to enforce any of the waivers provided for in this Agreement or any of the other Financing Agreements and (ii) acknowledges that in entering into this Agreement and the other Financing Agreements, Administrative Agent and Lenders are relying upon, among other things, the waivers and certifications set forth in this Section 11.1 and elsewhere herein and therein.

**19.2 Waiver of Notices.** Each Borrower and Guarantor hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonor with respect to any and all instruments and chattel paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on any Borrower or Guarantor which Administrative Agent or any Lender may elect to give shall entitle such Borrower or Guarantor to any other or further notice or demand to which such Borrower or Guarantor is not otherwise entitled in the same, similar or other circumstances.

**19.3 Amendments and Waivers.**

(a) Neither this Agreement nor any other Financing Agreement nor any terms hereof or thereof may be amended, waived, discharged or terminated unless such amendment, waiver, discharge or termination is in writing signed by Administrative Agent and the Required Lenders or at Administrative Agent's option, by Administrative Agent with the authorization of the Required Lenders, and as to amendments to any of the Financing Agreements person (other than with respect to any provision of Section 12 hereof) your spouse or domestic/civil union partner, attorney and tax advisor, by Lead Borrower (for itself and the other Borrowers); except, that,

(i) any amendment, waiver, discharge or termination with respect to the following shall require the consent of Administrative Agent and all Lenders:

(A) amend, modify or waive any terms of the definition of "Pro Rata Share", Section 2.9 or this Section 11.3 hereof,

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(B) the change of any percentage specified in (or any amendment to) the definition of Required Lenders, Required Tranche A Lenders, Required Tranche A-1 Lenders or Supermajority Lenders,

(C) reduce the scheduled reductions in advance rates for any of the Tranche A Real Estate Availability, the Tranche A Equipment Availability or the Tranche A Rolling Stock Availability,

(D) release any Collateral (except as expressly required hereunder or under any of the other Financing Agreements or applicable law and except as permitted under Section 12.11(b) hereof) or release of any Guarantor,

(E) consent to the assignment or transfer by any Borrower or Guarantor of any of their rights and obligations under this Agreement,

(F) agree to the subordination of (1) any of the Obligations or (2) other than liens in and on the Qualified Debt Priority Collateral (as provided for in the Qualified Debt Intercreditor Agreement), any lien or security interest in favor of Administrative Agent for the benefit of Lenders, and

(G) increase the advance rates constituting part of any of the Tranche A Borrowing Base or the Tranche A-1 Borrowing Base;

(ii) any amendment, waiver, discharge or termination with respect to the following shall require the consent of Administrative Agent and each Lender directly and adversely affected thereby:

(A) reduce the interest rate or any fees, extend the time of payment of principal, interest or any fees or reduce the principal amount of any Loan or Letter of Credit Accommodations (provided, that, a waiver of default interest, Default or Event of Default shall not constitute a reduction of interest for this purpose),

(B) increase the Commitment of any Lender (including any Defaulting Lender) over the amount thereof then in effect or provided hereunder, and

(C) amend, modify or waive any terms of Sections 6.4(a) or (b) hereof;

(iii) the consent of the Administrative Agent, the Supermajority Lenders, the Required Tranche A Lenders and the Required Tranche A-1 Lenders shall be required for any amendment, waiver, discharge or termination with respect to (A) the definition of Tranche A Borrowing Base or Tranche A-1 Borrowing Base or any components thereof but only to the extent such proposed change would make more credit available to Borrowers (but exclusive of the right of Administrative Agent to add, increase, eliminate or reduce the amount of Reserves or to exercise other discretion it may have pursuant to such provisions) and (B) Section 2.5(e);

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(iv) any amendment, waiver, discharge or termination with respect to the following shall require the consent of Administrative Agent, the Required Tranche A Lenders and the Required Tranche A-1 Lenders:

(A) amend, modify or waive the definition of the term "Change of Control",

(B) amend, modify or waive any terms of Section 9.18 hereof,

(C) amend, modify or waive any of the payment conditions set forth in Sections 9.9(f)(viii), 9.9(l)(ii), 9.10(j)(iii) and 9.11(f),

(D) amend, modify or waive any terms of Sections 7.1(a)(i)(A) hereof with respect to the delivery of Borrowing Base Certificates and Section 9.6(a) hereof with respect to financial reporting,

(E) amend, modify or waive any terms of Section 9.5 hereof with respect to insurance requirements,

(F) increase the maximum amount of the Maximum Credit to an amount greater than permitted pursuant to Section 2.6(a) hereof, and

(G) amend, modify or waive any of the dollar or Excess Availability requirements in Section 9.7(b) hereof with respect to permitted dispositions.

(H) amend, modify or waive any terms of Section 12.8 and 12.11(a).

(b) Administrative Agent, Sustainability Structuring Agent, Lenders and Issuing Bank shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its or their rights, powers and/or remedies unless such waiver shall be in writing and signed as provided herein. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Administrative Agent, Sustainability Structuring Agent, any Lender or Issuing Bank of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Administrative Agent, Sustainability Structuring Agent, any Lender or Issuing Bank would otherwise have on any future occasion, whether similar in kind or otherwise.

(c) Notwithstanding anything to the contrary contained in Section 11.3(a) above, in connection with any amendment, waiver, discharge or termination, in the event that any Lender whose consent thereto is required shall fail to consent or fail to consent in a timely manner (such Lender being referred to herein as a “Non-Consenting Lender”), but the consent of any other Lenders to such amendment, waiver, discharge or termination that is required are obtained, if any, then Wells and Parent shall have the right, but not the obligation, at any time thereafter, and upon the exercise by Wells or Parent of such right, such Non-Consenting Lender shall have the obligation, to sell, assign and transfer to Wells or such Eligible Transferee as Wells may specify after consultation with Lead Borrower, the Commitment of such Non-Consenting Lender and all rights and interests of such Non-Consenting Lender pursuant thereto.

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Wells or Parent shall provide the Non-Consenting Lender with prior written notice of its intent to exercise its right under this Section, which notice shall specify on date on which such purchase and sale shall occur. Such purchase and sale shall be pursuant to the terms of an Assignment and Acceptance (whether or not executed by the Non-Consenting Lender), except that on the date of such purchase and sale, Wells, or such Eligible Transferee specified by Wells after consultation with Lead Borrower, shall pay to the Non-Consenting Lender (except as Wells and such Non-Consenting Lender may otherwise agree) the amount equal to: (i) the principal balance of the Loans held by the Non-Consenting Lender outstanding as of the close of business on the business day immediately preceding the effective date of such purchase and sale, plus (ii) amounts accrued and unpaid in respect of interest and fees payable to the Non-Consenting Lender to the effective date of the purchase (but in no event shall the Non-Consenting Lender be deemed entitled to any early termination fee), minus (iii) the amount of the closing fee received by the Non-Consenting Lender pursuant to the terms hereof or of any of the other Financing Agreements multiplied by the fraction, the numerator of which is the number of months remaining in the then current term of the Credit Facility and the denominator of which is the number of months in the then current term thereof. Such purchase and sale shall be effective on the date of the payment of such amount to the Non-Consenting Lender and the Commitment of the Non-Consenting Lender shall terminate on such date.

(d) The consent of Administrative Agent shall be required for any amendment, waiver or consent affecting the rights or duties of Administrative Agent hereunder or under any of the other Financing Agreements, in addition to the consent of the Lenders otherwise required by this Section and the exercise by Administrative Agent of any of its rights hereunder with respect to Reserves or Eligible Accounts, Eligible Military Receivables, Eligible Inventory, Eligible Credit Card Receivables, Eligible Unaffixed Cigarette Tax Stamps, Eligible Equipment, Eligible Prescription Files, Eligible Life Insurance Policies, Eligible Cash and Cash Equivalents, Eligible Real Property or Eligible Rolling Stock shall not be deemed an amendment to the advance rates provided for in this Section 11.3. The consent of Sustainability Structuring Agent shall be required for any amendment, waiver or consent affecting the rights, duties or liabilities of Sustainability Structuring Agent hereunder or under any of the other Financing Agreements, in addition to the consent of the Lenders otherwise required by this Section or this Agreement.

(e) The consent of Administrative Agent and each Bank Product Provider that is providing any Bank Products and has outstanding any such Bank Products at such time that are secured hereunder shall be required for any amendment, waiver or consent to the priority of payment of Obligations arising under or pursuant to any Bank Products lawful subpoena, as set forth in Sections 6.4(a) the Reports to Government Entities clause below or as otherwise permitted by law. This provision is not intended to restrict your legal right to discuss the terms and (b) hereof. In no event shall the consent or approval conditions of any Bank Product Provider be required for any amendment, waiver or consent under your employment.

**Reports to Government Entities.** Nothing in this Agreement, including the Limit on Disclosures or Release of Claims clause, restricts or prohibits you from initiating communications directly with, responding to any inquiries from, providing testimony before, providing confidential information to, reporting possible violations of law or regulation to, or filing a claim or assisting with an investigation directly with a self-regulatory authority or a government agency or entity, including the U.S. Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Department of Justice, the Securities and Exchange Commission, Congress, and any agency Inspector General (collectively, the "Regulators"), or from

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**Exhibit 10.22**

making other Financing Agreements, except as provided disclosures that are protected under the whistleblower provisions of state or federal law or regulation. However, to the maximum extent permitted by law, you are waiving your right to receive any individual monetary relief from the Company or any others covered by the Release of Claims resulting from such claims or conduct, regardless of whether you or another party has filed them, and in the immediately preceding sentence, event you obtain such monetary relief, the Company will be entitled to an offset for the payments made pursuant to this Agreement. This Agreement does not limit your right to receive an award from any Regulator that provides awards for providing information relating to a potential violation of law. You do not need the prior authorization of the Company to engage in conduct

protected by this paragraph, and you do not need to notify the Company that you have engaged in such conduct.

(f) Notwithstanding anything Please take notice that federal law provides criminal and civil immunity to federal and state claims for trade secret misappropriation to individuals who disclose trade secrets to their attorneys, courts, or government officials in certain, confidential circumstances that are set forth at 18 U.S.C. §§ 1833(b)(1) and 1833(b)(2), related to the contrary contained herein, any amendment contemplated by Section 3.1(e) reporting or Section 3.4 investigation of a suspected violation of the law, or in connection with a lawsuit for retaliation for reporting a suspected violation of the use or administration of Adjusted Daily Simple SOFR, Adjusted Term SOFR or a Benchmark Transition Event, as applicable, shall be effective as contemplated by such Section 3.1(e) or Section 3.4, as applicable

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law.

**19.4 Waiver Nonadmission of Counterclaims Liability.** Each Borrower and Guarantor waives all rights to interpose any claims, deductions, setoffs or counterclaims Nothing in this Agreement is an admission of any nature (other than compulsory counterclaims) in any action wrongdoing, liability or proceeding with respect to this Agreement, unlawful activity by you or by the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto. Company.

**19.5 Indemnification No Other Amounts Due.** Each Borrower and Guarantor shall, jointly and severally, indemnify and hold Administrative Agent, Issuing Bank, Sustainability Structuring Agent, Swing Line Lender and each Lender, and its officers, directors, agents, employees, advisors and counsel and their respective Affiliates (each such person being an "Indemnitee"), harmless from and against any and all losses, claims, damages, liabilities, costs or expenses (including attorneys' fees and expenses) imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other Financing Agreements, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel except that Borrowers and Guarantors shall not have any obligation under this Section 11.5 to indemnify an Indemnitee with respect to a matter covered hereby to the extent resulting from the gross negligence or wilful misconduct of such Indemnitee as determined pursuant to a final, non-appealable order of a court of competent jurisdiction (but without limiting the obligations of Borrowers or Guarantors as to any other Indemnitee). To the extent You acknowledge that the undertaking to indemnify, pay Company has paid you all wages, salaries, bonuses, benefits and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, Borrowers other amounts earned and Guarantors shall pay accrued, less applicable deductions, and that the maximum portion which it is permitted Company has no obligation to pay under applicable law to Administrative Agent, Sustainability Structuring Agent and Lenders any additional amounts other than the payment(s) described in satisfaction of indemnified matters under this Section. To the extent permitted by applicable law, no Borrower or Guarantor shall assert, and each Borrower and Guarantor 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 of the other Financing Agreements or any undertaking or transaction contemplated hereby. All amounts due under this Section



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total outstanding Borrowing Base, discretion, provide additional Letter Agent may make aggregate principal Borrowing Base Special Administrator and (ii) hereof that cause the total amount of Accommodations exceed the Tranche A-1 Loan Accommodation such additional Loans the case may be Tranche A-1 Loans exist for at least additional Loans Lender shall be a Share of any such Required Lender authority of Administrator Section 12.8 at a

#### 20.9 Consent

Each Lender under the Agreement and the Tranche A-1 Loan Required Lender or Supermajority other Financing, Lenders, Required Supermajority Lender together with such binding upon the applicable.

#### 20.10 Disclaimer by Lender

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shall then be due otherwise and in demand on the Event such proceeding

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and interest owing obligations under and all other Obligations documents as may claims against the Agent (including disbursements and their respective Issuing Bank and

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deliverable on assignment receiver, assignee such judicial proceeding to make such payment Administrative Agent Lenders and Issuing reasonable compensation Administrative Agent Administrative Agent

receive

(b) Nothing contained herein shall be deemed to authorize Administrative Agent to (c) To the 20.14 authorize or consent to or accept or adopt on behalf of any Lender or Issuing agent Successor Bank any plan of reorganization, arrangement, adjustment or composition required by Administrat

affecting the Obligations or the rights of any Lender or to authorize Administrative local law, Agent.  
 Agent to vote in respect of the claim of any Lender in any such proceeding. Borrowers Administrat  
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**Administrative Agent's notice**

the Company advises you to consult with an attorney;

• you know that you can revoke this Agreement within seven days of resignation, signing it and that the retiring Administrative Agent's resignation shall nonetheless thereupon Agreement does not become effective and Lenders shall perform all of the duties of Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Any resignation by Administrative Agent pursuant to this Section shall also constitute its resignation as Issuing Bank and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and Swing Line Lender, (b) the retiring Issuing Bank and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Financing Agreements, and (c) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

20.15 **Other Agent Designations.** Administrative Agent may at any time and from time to time determine that a Lender may, in addition, be a "Administrative Agent", "Syndication Agent", "Documentation Agent" or similar designation hereunder and enter into an agreement with such Lender to have it so identified for purposes of this Agreement. Administrative Agent shall provide written notice to Lead Borrower of any such agreement. Any Lender seven-day period has passed. To revoke, contact Ileana McAlary, Chief Legal Officer.

• you agree that is so designated as a Administrative Agent, Syndication Agent, Documentation Agent or such similar designation by Administrative Agent shall have no right, power, obligation, liability, responsibility or duty under this Agreement or any of the other Financing Agreements other than those applicable to all Lenders as such. Without limiting the foregoing, the Lenders so identified

shall not have or be deemed to have any fiduciary relationship with any Lender and no Lender shall be deemed to have relied, nor shall any Lender rely, on a Lender so identified as a Administrative Agent, Sustainability Structuring Agent, Syndication Agent, Documentation Agent or such similar designation in deciding to enter into this Agreement or in taking or not taking action hereunder.

## **SECTION 21. TERM OF AGREEMENT; MISCELLANEOUS**

### **21.1 Term.**

(a) THIS AGREEMENT AND THE OTHER FINANCING AGREEMENTS SHALL BECOME EFFECTIVE AS OF THE DATE SET FORTH ON THE FIRST PAGE HEREOF AND SHALL CONTINUE IN FULL FORCE AND EFFECT FOR A TERM ENDING ON November 17, 2027 (THE "MATURITY DATE"). In addition, Borrowers may terminate this Agreement at any time upon ten (10) days prior written notice to Administrative Agent (which notice shall be irrevocable) and Administrative Agent may, at its option, and shall at the direction of Required Lenders, terminate this Agreement at any time on or after an Event of Default. Upon the Maturity Date or any other effective date of termination of the Financing Agreements, Borrowers shall pay to Administrative Agent all outstanding and unpaid Obligations and shall furnish cash collateral to Administrative Agent (or at Administrative Agent's option, a letter of credit issued for the account of Borrowers and at Borrowers' expense, in form and substance satisfactory to Administrative Agent, by an issuer acceptable to Administrative Agent and payable to Administrative Agent as beneficiary) in such amounts as Administrative Agent determines are reasonably necessary to secure Administrative Agent and

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Lenders from loss, cost, damage or expense, including attorneys' fees and expenses, in connection with any contingent Obligations, including issued and outstanding Letter of Credit Accommodations and checks or other payments provisionally credited to the Obligations and/or as to which Administrative Agent or any Lender has not yet received final and indefeasible payment and any continuing obligations of Administrative Agent or any Lender pursuant to any Deposit Account Control Agreement (contingent or otherwise) and for any of the Obligations, arising under or in connection with any Bank Products in such amounts as the Bank Product Provider may require (unless such Obligations arising under or in connection with any Bank Products are paid in full in cash and terminated in a manner satisfactory to the Bank Product Provider). The amount of such cash collateral (or letter of credit, as Administrative Agent may determine) as to any Letter of Credit Accommodations shall be in the amount equal to one hundred five (105%) percent of the amount of the Letter of Credit Accommodations plus the amount of any expenses payable or to become payable in connection therewith through the end of the latest expiration date of such Letter of Credit Accommodations. Such payments in respect of the Obligations and cash collateral shall be remitted by wire transfer in Federal funds to the Administrative Agent Payment Account or such other bank account of Administrative Agent, as Administrative Agent may, in its discretion, designate in writing to Lead Borrower for such purpose. Interest shall be due until and including the next Business Day, if the amounts so paid by Borrowers to the Administrative Agent Payment Account or other bank account designated by Administrative Agent are received in such bank account later than 12:00 noon, Boston time.

(b) No termination of this Agreement or the other Financing Agreements shall relieve or discharge any Borrower or Guarantor of its respective duties, obligations and covenants under this Agreement or the other Financing Agreements until all Obligations have been fully and finally discharged and paid, and Administrative Agent's continuing security interest in the Collateral and the rights and remedies of Administrative Agent and Lenders hereunder, under the other Financing Agreements and applicable law, shall remain in effect until all such Obligations have been fully and finally discharged and paid. Accordingly, each Borrower and Guarantor waives any rights it may have under the UCC to demand the filing of termination statements with respect to the Collateral and Administrative Agent shall not be required to send such termination statements to Borrowers or Guarantors, or to file them with any filing office, in each case, unless and until this Agreement shall have been terminated in accordance with its terms and all Obligations paid and satisfied in full in immediately available funds.

#### 21.2 Interpretative Provisions.

(a) All terms used herein which are defined in Article 1, Article 8 or Article 9 of the UCC shall have the meanings given therein unless otherwise defined in this Agreement.

(b) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(c) All references to any Borrower, Guarantor, Administrative Agent and Lenders pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns.

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(d) The words "hereof", "herein", "hereunder", "this Agreement" and words of similar import when used in this Agreement shall refer changes to this Agreement as a whole and before its execution, whether material or immaterial, do not any particular provision of restart your time to review this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. Agreement.

(e) The word "including" when used in this Agreement shall mean "including, without limitation" and the word "will" when used in this Agreement shall be construed to have the same meaning and effect as the word "shall".

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(f) An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 11.3 or is cured in a manner satisfactory to Administrative Agent, if such Event of Default is capable of being cured as determined by Administrative Agent.

(g) All references to the term "good faith" used herein when applicable to Administrative Agent or any Lender shall mean, notwithstanding anything to the contrary contained herein or in the UCC, honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing based on how an asset-based lender with similar rights providing a credit facility of the type set forth herein would act in similar circumstances at the time with the information then available to it. Borrowers and Guarantors shall have the burden of proving any lack of good faith on the part of Administrative Agent or any Lender alleged by any Borrower or Guarantor at any time.

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(h) Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the financial statements of Parent most recently received by Administrative Agent prior to the Effective Date or such other method as may be acceptable to Administrative Agent. Notwithstanding anything to the contrary contained in GAAP or any interpretations or other pronouncements Exhibit 10.22

Agreed into by the Financial Accounting Standards Board or otherwise, the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is not only unqualified (other than by reason of an exception as to consistency related to new accounting pronouncements or method change under GAAP) but also does not include any explanation, supplemental comment or other comment or note concerning the ability of the applicable person to continue as a going concern. If at any time any change in GAAP would affect the computation of any financial ratio, requirement or other provision set forth in any Financing Agreement, and either the Lead Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio, requirement or other provision to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); following parties:

SpartanNash

/s/ Tony Sarsam provided, that, until so amended, (i) such ratio, requirement or other provision shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Lead Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio, requirement or other provision made before and after giving effect to such change in GAAP. \_\_\_\_\_

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Name: Tony Sarsam

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(i) Date: In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including". 01/04/2024

EXECUTIVE

(j) /s/ David Sisk Unless otherwise expressly provided herein, (i) references herein to any agreement, document or instrument shall be deemed to include all subsequent amendments, modifications, supplements, extensions, renewals, restatements or replacements with respect thereto, but only to the extent the same are not prohibited by the terms hereof or of any other Financing Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, recodifying, supplementing or interpreting the statute or regulation. \_\_\_\_\_

(k) Name: The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement. David

Sisk

(l) Date: This Agreement and other Financing Agreements may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms. 12/31/2023

(m) This Agreement and the other Financing Agreements are the result of negotiations among and have been reviewed by counsel to Administrative Agent and the other parties, and are the products of all parties. Accordingly, this Agreement and the other Financing Agreements shall not be construed against Administrative Agent or Lenders merely because of Administrative Agent's or any Lender's involvement in their preparation.

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

21.3 Notices. All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next Business Day, one (1) Business Day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

Exhibit 19

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POLICIES AND PROCEDURES

<b>If to any Borrower or Guarantor: Policy Name:</b>	<b>SpartanNash Company Insider Trading Policy</b>				
<b>Document Owner:</b>	<b>SpartanNash Company</b> 850 76 Ileana McAlary, EVP Chief Legal Officer & Secretary	<b>Effective:</b>	August 23, 2023	<b>Updated:</b>	August 23, 2023
<b>Responsible Executive:</b>	<b>Ileana McAlary, EVP Chief Legal Officer &amp; Secretary</b>	<b>Editors:</b>	<b>Ileana McAlary, EVP Chief Legal Officer &amp; Secretary</b>		

**CONFIDENTIAL: St. SW**

P.O. Box 8700

Grand Rapids, Michigan 49518-8700

This document is the property of SpartanNash and may not be copied or disclosed to others without authorization from the document owner or responsible executive. Additionally, this policy may not be amended or modified without the approval of the SpartanNash Chief Legal Officer.

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## Executive Summary

The Board of Directors (the "Board") of SpartanNash Company (together with its subsidiaries, the "Company") has adopted this policy regarding insider trading (this "Policy"). This Policy sets forth acceptable transactions in Company securities by our associates (including executive officers), members of the Board, advisors, and consultants (collectively, "Insiders"), and also applies to certain family members and affiliates of Insiders. All Insiders must:

Refrain from buying, selling, or gifting securities of the Company (or any other public company) while in possession of Material Nonpublic Information (as defined below);

Refrain from disclosing Material Nonpublic Information (as defined below) to others who might trade securities based on such information; and

Protect confidential Company information from unintended disclosure.

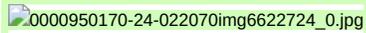
*A good general rule of thumb: when in doubt, do not trade.*

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**SpartanNash Company Insider Trading Policy, August 23, 2023 Page 1 of 11**

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**Exhibit 19**

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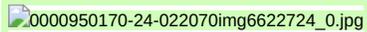
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**Exhibit 19**



**Purpose**

Preventing insider trading is necessary to comply with the federal securities laws and to preserve the integrity and reputation of the Company and that of all persons associated with the Company. The purpose of this

Agreement Policy is held to be invalid define the restrictions and procedures applicable to the purchase, gift, and/or unenforceable, such invalidity sale of any type of securities that the Company may from time to time issue ("SpartanNash Securities"), including, without limitation, common stock, options to purchase common stock, debt securities, preferred stock, convertible debentures and exchange-traded options or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain other derivative securities and securities of other publicly traded companies by persons having access to Material Nonpublic Information (as defined below).

It is important that you understand the particular provision held to be invalid or unenforceable breadth of activities that constitute illegal insider trading and the rights consequences, which can be serious. Both the U.S. Securities and obligations of Exchange Commission ("SEC") and the parties shall be construed Nasdaq Stock Market investigate and enforced only to such extent as shall be permitted by applicable law.

#### 21.5 Confidentiality.

(a) Administrative Agent and each Lender shall use all reasonable efforts to keep confidential, in accordance with its customary procedures for handling confidential information and safe and sound lending practices, any material non-public information supplied to it by any Borrower pursuant to this Agreement, provided, that, nothing contained herein shall limit the disclosure of any such information: (i) to the extent required by statute, rule, regulation, subpoena or court order, (ii) to bank examiners and other regulators, auditors and/or accountants, in connection with any litigation to which Administrative Agent or such Lender is a party or as may be requested or required by any Governmental Authority, (iii) to any Lender (or its agents or other representatives) or Participant (or prospective Lender or Participant) or to any Affiliate of any Lender, so long as such Lender (or its agents or other representatives) or Participant (or prospective Lender or Participant) or Affiliate shall are very effective at detecting insider trading. Cases have been instructed to treat such information as confidential in accordance with this Section 13.5, or (iv) to counsel for Administrative Agent or any Lender or Participant (or prospective Lender or Participant).

(b) In the event that Administrative Agent or any Lender receives a request or demand to disclose any confidential information pursuant to any subpoena or court order, Administrative Agent or such Lender, as the case may be, agrees (i) to the extent permitted by applicable law or if permitted by applicable law, to the extent Administrative Agent or such Lender determines in good faith that it will not create any risk of liability to Administrative Agent or such Lender, Administrative Agent or such Lender will promptly notify Lead Borrower

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of such request so that Lead Borrower may seek a protective order or other appropriate relief or remedy and (ii) if disclosure of such information is required, disclose such information and, subject to reimbursement by Borrowers of Administrative Agent's or such Lender's expenses, cooperate with Lead Borrower in the reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed information which Lead Borrower so designates, to the extent permitted by applicable law or if permitted by applicable law, to the extent Administrative Agent or such Lender determines in good faith that it will not create any risk of liability to Administrative Agent or such Lender.

(c) In no event shall this Section 13.5 or any other provision of this Agreement, any of the other Financing Agreements or applicable law be deemed: (i) to apply to or restrict disclosure of information that has been or is made public by any Borrower, Guarantor or any third party or otherwise becomes generally available to the public other than successfully prosecuted against individuals as a result of trades involving only a disclosure small number of shares. There are no exceptions for small or "immaterial" transactions.

#### Company Assistance

Any person who has questions regarding this Policy or its application to any proposed trade may obtain additional guidance from the Company's Chief Legal Officer. Ultimately, however, the responsibility for adhering to this Policy

and avoiding unlawful transactions rests with the individual. The Chief Legal Officer, or in violation hereof, (ii) his/her absence the designee in the Legal Department, shall be responsible for interpreting this Policy.

#### Individual Responsibility

Every Insider subject to apply this Policy has the individual responsibility to comply with this Policy. Individuals subject to this Policy are responsible for ensuring that certain family members and affiliates (as described under the "Covered Individuals" section below) also comply with the Policy. You may, from time to time, have to forgo a proposed trade in SpartanNash Securities or restrict disclosure securities of information another publicly traded company even if you planned on making the trade before learning of the Material Nonpublic Information (as defined below), and even though you believe you may suffer an economic loss or give up an opportunity for profit by waiting.

#### Covered Individuals

This Policy applies to:

- Insiders;
- Anyone who resides with an Insider in his/her respective households;
- Any family members who do not live with the above-designated persons, but whose transactions in SpartanNash Securities are directed by, or are subject to, their influence or control, such as parents or children;
- Any other person or entity, including a trust, corporation, partnership or other association, that was or becomes available to Administrative Agent effects a transaction in SpartanNash Securities which securities are beneficially owned by the above-designated persons, or any Lender (or such entity controlled by the above-designated persons); and

Any other persons designated by the Chief Legal Officer as covered by this Policy because they have access to Material Nonpublic Information.

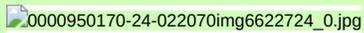
The individuals and entities described above are referred to as "Covered Individuals".

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*SpartanNash Company Insider Trading Policy, August 23, 2023 Page 3 of 11*

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#### Exhibit 19



This Policy applies to all of the following: accounts in the name of Covered Individuals; accounts over which they exercise control; and accounts in which they have any Affiliate direct or indirect financial or other beneficial interest. It is your obligation to make Covered Individuals affiliated with you aware of, and understand and comply with, the provisions and obligations of this Policy.

#### Covered Transactions

This Policy applies to all transactions in:

- any SpartanNash Securities; and
- the publicly traded securities of any Lender on a non-confidential basis from a person other than a Borrower entity, including customers and suppliers of the Company, where such entity enters into discussions or Guarantor, (iii) to require Administrative Agent or any Lender to return any materials furnished by a Borrower or Guarantor to Administrative Agent or a Lender or prevent Administrative Agent or a Lender from responding to routine informational requests in accordance transactions with the Company regarding a significant contract or order, a combination or consolidation, merger, acquisition or similar transaction (each such entity, a "Code of Ethics for the Exchange of Credit Information Public Company promulgated by The Robert Morris Associates or other applicable industry standards relating to the exchange of credit information. The obligations of Administrative Agent and Lenders under this Section 13.5 shall supersede and replace the obligations of Administrative Agent and Lenders under any confidentiality letter signed prior to the Effective Date.").

(d) Material Nonpublic Information (as defined below) is not limited to information regarding the Company. It is possible for an Insider to acquire Material Nonpublic Information about a Company business partner or prospective business partner ("Notwithstanding anything Business Partner").

If an Insider obtains Material Nonpublic Information regarding a Business Partner that relates to Company business, the contrary set forth herein or Insider is prohibited from trading in any the securities of the other Financing Agreements Company and the Business Partner. If an Insider obtains Material Nonpublic Information regarding a Business Partner that does not affect the Company (e.g., a new product launch, merger of the Business Partner and another company, etc.), then the Insider may not trade in the securities of the Business Partner or any other written or oral understanding or agreement, (i) companies to which the information applies.

#### Exceptions

The exceptions to these restrictions are extremely limited. The trading restrictions under this Policy do not apply to:

1. The exercise of stock options granted by the Company using a “net share settlement” approach such that no shares are sold, and the exercise price and any obligations of confidentiality contained herein, in any of the other Financing Agreements or any such other understanding or agreement do not apply and have not applied from the commencement of discussions between the parties taxes withheld are paid with shares surrendered to the tax treatment and tax structure of Company, as permitted by the transactions contemplated herein (and any related transactions applicable stock option or arrangements), and (ii) each party (and each of its employees, representatives, or other agents) may disclose to any and all persons equity compensation plan, as long as the tax treatment and tax structuring of person exercising the transactions contemplated herein and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulation Section 1.6011-4; provided, that, each party recognizes that the privilege that it may, in its discretion, maintain with respect to the confidentiality of a communication relating to the transactions contemplated herein, including a confidential communication with its attorney or a confidential communication with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code, option is not intended to be affected by the foregoing. Borrowers and Guarantors do not intend to treat the Loans and related transactions as being a “reportable transaction” (within the meaning in possession of Treasury Regulation Section 1.6011-4). In the event Borrowers or Guarantors determine to take any action inconsistent with such intention, it will promptly notify Administrative Agent thereof. Each Borrower and Guarantor acknowledges that one or more of Lenders may treat its Loans as part of a transaction that is subject to Treasury Regulation Section 1.6011-4 or Section 301.6112-1, and the Administrative Agent and such

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Lender or Lenders, as applicable, may file such IRS forms or maintain such lists and other records as they may determine is required by such Treasury Regulations.

**21.6 Successors.** This Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon and inure to the benefit of and be enforceable by Administrative Agent, Lenders, Borrowers, Guarantors and their respective successors and assigns, except that Borrower may not assign its rights under this Agreement, the other Financing Agreements and any other document referred to herein or therein without the prior written consent of Administrative Agent and Lenders. Any such purported assignment without such express prior written consent shall be void. No Lender may assign its rights and obligations under this Agreement without the prior written consent of Administrative Agent, except as provided in Section 13.7 below. The terms and provisions of this Agreement and the other Financing Agreements are for the purpose of defining the relative rights and obligations of Borrowers, Guarantors, Administrative Agent and Lenders with respect to the transactions contemplated hereby and there shall be no third party beneficiaries of any of the terms and provisions of this Agreement or any of the other Financing Agreements.

#### 21.7 Assignments; Participations.

(a) Each Lender may, with the prior written consent of Administrative Agent, Swing Line Lender, Issuing Bank and Lead Borrower, which consents shall not be unreasonably withheld, conditioned or delayed (which consent of Lead Borrower shall not be required (i) at any time a Default or Event of Default exists or has occurred and is continuing or (ii) in connection with an assignment to a Person that is a Lender, an Affiliate (other than individuals) of a Lender or an Approved Fund so long as no Default or Event of Default exists Material Nonpublic Information at the time of the exercise. Any subsequent sale of any shares acquired pursuant to such assignment), assign all or, if less than all, (A) exercise is subject to this Policy. Please remember that any transaction involving the sale of shares, including a broker-assisted cashless exercise of an option, is not exempt from this Policy.

2. Periodic purchases of Company common stock in the Savings Plus Plan through payroll deductions, provided that the initial election with respect to assignments such deductions is not made while in the possession of Material Nonpublic Information.
3. This Policy does not apply to the vesting of restricted stock, or the exercise of a tax withholding right pursuant to which you elect to have the Company withhold shares of stock to satisfy tax withholding requirements upon the vesting of any restricted stock. Please remember that any transaction involving the market sale of previously restricted stock is not exempt from this Policy.
4. Transactions made under a trading plan that meets the requirements of Rule 10b5-1 of the Tranche A Revolving Loans, Securities Exchange Act of 1934, as amended ("Exchange Act"), and the requirements of this Policy relating thereto ("Rule 10b5-1 Trading Plan").

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*SpartanNash Company Insider Trading Policy, August 23, 2023 Page 4 of 11*

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Exhibit 19

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If you are unsure about whether or not one of these exceptions applies to your situation, you should exercise caution by not trading until you have an opportunity to fully consult with the Chief Legal Officer or his/her designee.

#### Material Nonpublic Information

Insider trading involves trading "on the basis of" Material Nonpublic Information (as defined below) or providing Material Nonpublic Information to other persons who may trade on the basis of that information. Under current U.S. federal securities laws, a portion equal person trades "on the basis of" Material Nonpublic Information about a security or entity if the person making the purchase, sale, or gift was aware of the Material Nonpublic Information when the person made the purchase, sale, or gift.

"Material Nonpublic Information" means Material Information that has not been disclosed generally to at least \$5,000,000 the investing public in a manner that complies with applicable securities laws (e.g., by a widely-disseminated press release or in a report furnished or filed with the SEC). The circulation of rumors, even if accurate and reported in the aggregate media, does not make information "public." One common misconception is that Material Information loses its "nonpublic" status as soon as a press release is issued disclosing the information.

In fact, Material Information that has been broadly released to the public through appropriate channels is not considered to be "public" until investors and the financial community have had time to fully absorb the information; until such time, it should continue to be regarded as Material Nonpublic Information and an illegitimate basis for trading. As a general rule, information should not be considered "public" until two full trading days have passed following publication. For example, if the assigning Tranche A Lender, Company announces financial results on Monday after market close, the window period will begin at market open on Thursday. If the Company announces financial results on Monday before market open, the window period will begin at market open on Wednesday.

"Material Information" means information about a company that:

- would be considered by a reasonable investor to be important information in making a decision to buy, sell, or hold a security;
- when publicly disclosed, would be expected to significantly alter the total mix of information in the marketplace about such company; or
- when publicly disclosed, could reasonably be expected to have an effect on the price of such company's securities.

Material Information can be positive or negative and (B) can relate to virtually any aspect of a company's business or to any type of security – debt or equity. Some examples of Material Information include:

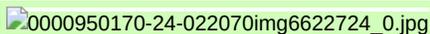
- significant mergers, divestitures, acquisitions, tender offers, joint ventures, or changes in assets, whether pending or proposed;
- changes in previously communicated guidance concerning earnings or results of operations;
- major management changes or changes in control;
- major restructuring actions, financing transactions or asset impairments and associated charges (such as those arising from a decision to exit a line of business);
- significant developments regarding customers or suppliers (e.g., acquisition or loss of a major contract);
- changes in auditors, or auditor notification that such company may no longer rely on the audit report;

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- events regarding such company's securities (e.g., defaults; redemptions; splits; repurchase plans; changes in dividends; changes in rights of holders; offerings of additional securities);
- significant gains or losses in major business operations;
- significant employee terminations or layoffs;
- significant litigation against such company or any significant development relating to such litigation;
- knowledge of a significant data security, privacy or cybersecurity incident;
- significant regulatory approvals or challenges;
- impending bankruptcy, significant changes in debt levels or liquidity problems; and
- any other information that might have a significant impact on the market value of such company's securities.

Any person who has a doubt about whether he/she is aware of Material Nonpublic Information concerning SpartanNash should contact the Chief Legal Officer at (616) 878-2200.

Prohibitions; Protection of Information

- Do not Trade While in Possession of Material Nonpublic Information**
  - a. *SpartanNash Securities.* No Covered Individual shall engage in any transaction involving the purchase, sale, gifting, or, for Insiders, pledging (as described under the "Additional Restrictions on Trading" section below) of any SpartanNash Securities, or otherwise advise or assist any third-party trading in SpartanNash Securities, while aware of Material Nonpublic Information regarding SpartanNash or any of its securities.
  - b. *Other Company's Securities.* Similarly, if a Covered Individual obtains Material Nonpublic Information with respect to assignments any Public Company, he or she shall not engage in any transaction involving the purchase, gift, or sale of the Tranche A-1 Revolving Loans, Public Company's securities. If an Insider is in possession of Material Nonpublic Information when his or her employment or service terminates, such Insider may not trade in SpartanNash Securities until such information has become public or is no longer Material Information.

**Do Not Disclose to Others Who Might Trade**

Covered Individuals must not communicate Material Nonpublic Information to any person who does not need that information for a legitimate business purpose, or recommend to anyone the purchase or sale of securities when aware of Material Nonpublic Information about the company involved. This practice, known as “tipping,” also violates the securities laws and can result in the same civil and criminal penalties that apply to insider trading, even though you did not actually trade and did not receive a portion equal of the proceeds from another person’s trading. Both the “tipper” (the person giving the tip to someone else) and the “tippee” (the person receiving the tip) have liability under U.S. securities laws.

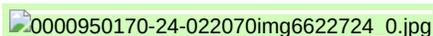
Tippees inherit an insider’s duties to keep confidential corporate information and are liable for trading on material, nonpublic information illegally provided to them by a corporate insider. In other words, if you receive an inside “tip,” you become a *de facto* insider and cannot trade while in possession of the information until after it becomes public.

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Similarly, tippees who pass the information along to others who trade may also be found liable, even if the tippee passes the information but does not trade him or herself. Individuals can obtain Material Nonpublic Information by receiving tips from others or through, among other things, conversations at least \$1,000,000 social, business or other gatherings.

**Protect Material Nonpublic Information**

In order to reduce the possibility that Material Nonpublic Information will be inadvertently disclosed:

- You must treat Material Nonpublic Information as confidential, exercise the utmost caution in preserving the confidentiality of that information, and should not discuss it with any other person who does not need to know it for legitimate business purposes.
- You should refrain from discussing information relating to the Company, any of its subsidiaries, or any Public Company, in public places where such discussions can be overheard.
- If you become aware of a leak of Material Nonpublic Information, whether inadvertent or otherwise, you should report the leak immediately to the Chief Legal Officer.

**Holds.** The Chief Legal Officer of the Company may, from time to time, notify Insiders, or some subset of Insiders, that purchases, sales, and gifts of SpartanNash Securities should be suspended until further notice. Upon receipt of such a notice, all who receive it should cancel any outstanding unfilled purchase and sale orders previously placed with brokers and should refrain from purchasing, selling or gifting any SpartanNash Securities or arranging any new transactions of SpartanNash Securities until further notice.

Such notifications generally will not state the reason for the hold. It should be cautioned that the existence of a hold on purchases, gifts, and sales may itself be Material Information. Insiders should not communicate the existence of a hold except to the extent absolutely necessary to prevent securities transactions by persons for whom they are responsible.

**Additional Limitations and Requirements for Corporate Insiders**

The following provisions of the Policy apply to:

- all members of the Board;
- all the individuals identified as executive officers in the aggregate Company’s most recently filed annual report on Form 10-K;
- any other person designated as an executive officer by the Board;
- family members or other persons living in the same household as the above-designated persons, any family members who do not live with the above-designated persons but whose transactions in

SpartanNash Securities are directed by, or are subject to, their influence or control, such as parents or children, as well as any other person or entity, including a trust, corporation, partnership or other association, which securities are beneficially owned by one of the above-designated persons or which is controlled by one of the above-designated persons.

- any other person designated as a Corporate Insider by the Chief Legal Officer.

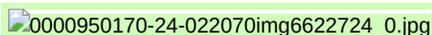
The individuals and entities described above are collectively referred to as "Corporate Insiders."

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**Trading Windows.** The risk of allegations of trading on inside information is minimized if Corporate Insiders limit their purchases, sales, and gifts of SpartanNash Securities to periods when the general public has recently received current financial information about the Company. Except as the Chief Legal Officer may expressly authorize in advance and in writing, Corporate Insiders must limit their purchases, sales, and gifts of SpartanNash Securities to the period beginning on the third trading day after the Company releases its quarterly financial results to the general public and continuing for the assigning Tranche A-1 Lender, period set forth below (such period, the "Trading Window"):

- a. 15 trading days following the release of such rights first quarter and obligations under this Agreement to one or more Eligible Transferees (but not including for this purpose any assignments in third quarter results; and
- b. 20 trading days following the form release of a participation), each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment second quarter and Acceptance; provided, that, (i) such transfer or assignment will not be effective until recorded by Administrative Agent on fourth-quarter and year-end results.

For the Register and (ii) Administrative Agent shall have received for its sole account payment of a processing fee from the assigning Lender or the assignee in the amount of \$5,000.

(b) Administrative Agent shall maintain a register of the names and addresses of Lenders, their Commitments and the principal amount of their Loans (the "Register"). Administrative Agent shall also maintain a copy of each Assignment and Acceptance delivered to and accepted by it and shall modify the Register to give effect to each Assignment and Acceptance. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and any Borrowers, Guarantors, Administrative Agent and Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall section, a "trading day" is a day on which the Nasdaq Stock Market (or other national securities exchange on which the Company's common stock is traded) is open for trading.

In addition, all trades by Corporate Insiders must be available pre-cleared, as described more fully below, even when the trade is within a Trading Window.

Purchases of SpartanNash Securities made pursuant to the Savings Plus Plan or Associate Stock Purchase Plan need not be confined to the periods above, as long as the decision to participate in either such plan is made at a time when the Corporate Insider would be eligible to purchase or sell SpartanNash Securities during a Trading Window described above, and at a time when the Corporate Insider was not in possession of Material Nonpublic Information. Additionally, purchases of SpartanNash Securities made pursuant to a valid pre-existing Rule 10b5-1 Trading Plan need not be confined to the periods above, as described more thoroughly

in the "Preapproved Trading Plans for inspection by Lead Borrower Corporate Insiders" section below.

Even when a contemplated trade falls within a Trading Window, purchases, sales, and gifts should not, in any Lender at any reasonable time event, be made if and when the Corporate Insider is in fact in possession of Material Nonpublic Information. In addition, from time to time, upon reasonable prior notice, notice to the persons affected, the Company may impose event-specific special blackout periods during which some or all Corporate Insiders are prohibited from trading in or gifting SpartanNash Securities.

#### Pre-Clearance of Trading

All purchases, sales and other transactions in SpartanNash Securities by Corporate Insiders must be pre-cleared by the Chief Legal Officer or his/her designee. Prior to initiating any trade in SpartanNash Securities, all Corporate Insiders must deliver to Human Resources, a completed "Request for Clearance to Engage in Transactions in SpartanNash Securities" application form, which is attached to this Policy, at least two business days in advance of the proposed transaction.

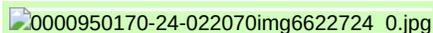
Clearance, if granted, will generally be valid for the duration of the Trading Window in which such clearance was granted, unless earlier revoked by the Chief Legal Officer. Notwithstanding the foregoing, a Corporate Insider may not make any purchases or sales of SpartanNash Securities at any time she or he is aware of any Material Nonpublic Information relating to the Company.

We also require that all Corporate Insiders submit to Human Resources a copy of any trade order or confirmation relating to the purchase, sale, or gift of SpartanNash Securities with a broker other than UBS. Section 16 Officers must report any such purchase, sale or gift of SpartanNash Securities to the Chief Legal Officer in advance of any trades or gifts taking place. This information is necessary to enable the Company to monitor trading by Corporate Insiders and ensure that all such trades are properly reported.

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#### Preapproved Trading Plans for Corporate Insiders

(c) Rule 10b5-1 of the Exchange Act provides an affirmative defense against insider trading liability for a transaction done pursuant to a written plan, or a binding contract or instruction, entered into in good faith at an earlier time when the Corporate Insider was not aware of Material Nonpublic Information, even though the trade in question may occur at a time when the person is aware of Material Nonpublic Information.

Upon such execution, delivery, acceptance The Company may, in appropriate circumstances, permit trades pursuant to a trading program that complies with Rule 10b5-1 to take place outside the Trading Windows described above, provided that the Rule 10b5-1 Trading Plan is approved pursuant to Company policies and recording, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be procedures.

Insiders who wish to establish a party hereto and Rule 10b5-1 Trading Plan should refer to the other Financing Agreements and, to the extent Company's Guidelines for Rule 10b5-1 Trading Plans which are attached as Exhibit A hereto.

Individual transactions that rights and obligations hereunder have been assigned to it take place pursuant to such Assignment and Acceptance, have an approved Rule 10b5-1 Trading Plan need not be pre-cleared in the rights and obligations (including, without limitation, the obligation to participate in Letter of Credit Accommodations) of a Lender hereunder and thereunder and the assigning Lender shall, to the extent manner described above. However, note that rights and obligations hereunder have been assigned by it trades made pursuant to such

Assignment and Acceptance, relinquish its rights and Rule 10b5-1 Trading Plans outside of UBS, the Company's broker, must still be released from its obligations under this Agreement.

(d) By execution and delivery of an Assignment and Acceptance, the assignor and assignee thereunder confirm reported to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any of the other Financing Agreements or the execution, legality, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Financing Agreements furnished pursuant hereto, (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition Human Resources within one business day of any Borrower, Obligor or any of their Subsidiaries or the performance or observance by any Borrower or Obligor of any of the Obligations; (iii) such assignee confirms that it has received a copy of this Agreement and the other Financing Agreements, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such assignee will, independently and without reliance upon the assigning Lender, Administrative Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Financing Agreements, (v) such assignee appoints and authorizes Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Financing Agreements as are delegated to Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Financing Agreements are required to be performed by it as a Lender. Administrative Agent and Lenders may furnish any information concerning any Borrower or Obligor in the possession of Administrative Agent or any Lender from time to time to assignees and Participants.

(e) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Financing Agreements (including, without limitation, all or a portion of its Commitments and the Loans owing to it and its participation in the Letter of Credit Accommodations, without the consent of Administrative Agent or the other Lenders); provided, that, (i) such Lender's obligations under this Agreement (including, without limitation, its Commitment hereunder) and the other Financing Agreements shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and Borrowers, Guarantors, the other Lenders and Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the

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other Financing Agreements, and (iii) the Participant shall not have any rights under this Agreement or any of the other Financing Agreements (the Participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the Participant relating thereto) and all amounts payable by any Borrower or Guarantor hereunder shall be determined as if such Lender had not sold such participation.

(f) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans hereunder to a Federal Reserve Bank in support of borrowings made by such Lenders from such Federal Reserve Bank; provided, that, no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee for such Lender as a party hereto.

(g) Borrowers and Guarantors shall assist Administrative Agent or any Lender permitted to sell assignments or participations under this Section 13.7 in a manner reasonably necessary in order to enable or effect any such assignment or participation, including (but not limited to) the execution and delivery of any and all agreements, notes and other documents and instruments as shall be requested and the delivery of informational materials, appraisals or other documents for, and the participation of relevant management in meetings and conference calls with, potential Lenders or Participants. Borrowers shall certify the correctness, completeness and accuracy, in all material respects, of all descriptions of Borrowers and Guarantors and their affairs provided, prepared or reviewed by any Borrower or Guarantor that are contained in any selling materials and all other information provided by it and included in such materials.

**21.8 Entire Agreement.** This Agreement, the other Financing Agreements, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

**21.9 Patriot Act.** Each Lender subject to the Patriot Act hereby notifies each Borrower and Guarantor that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each person or corporation who opens an account and/or enters into a business relationship with it, which information includes the name and address of Borrower and Guarantor and other information that will allow such Lender to identify such person in accordance with the Patriot Act and any other applicable law. Borrower and Guarantor are hereby advised that any Loans or Letters of Credit Accommodations hereunder are subject to satisfactory results of such verification. In addition, if Administrative Agent is required by law or regulation or internal policies to do so, it shall have transaction. The Company reserves the right to periodically conduct bar any transactions in SpartanNash Securities or other securities, even those pursuant to previously approved Rule 10b5-1 Trading Plans.

Directors and officers may not engage in any "hedging" transactions (such as "collar" transactions, contingent or forward sales, or other similar or related transactions) if they are trading in SpartanNash Securities pursuant to a Rule 10b5-1 Trading Plan. Please see the Company's Policy on Hedging and Pledging Company Stock for more information.

#### **Additional Restrictions for Corporate Insiders**

**Short Sales.** Federal securities laws generally, and the Company's policy, prohibit "short" sales by Corporate Insiders. Corporate Insiders may not directly or indirectly sell any SpartanNash Securities if the person selling the security does not own the security or, if he or she owns the security, the person does not deliver it against such sale within 20 days after the sale or does not mail or otherwise make customary arrangements for delivery of the security within five days after the sale.

**Hedging and Pledging.** The Company's policy on hedging and pledging SpartanNash Securities prohibits executive officers and directors from: (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for Borrower and Guarantor purchasing any financial instrument or entering into any transaction that is designed to hedge or offset any decrease in the market value of SpartanNash Securities (including, but not limited to, prepaid variable forward contracts, equity swaps, or collars); and (b) OFAC/PEP searches pledging or otherwise encumbering SpartanNash Securities as collateral for indebtedness. This prohibition includes, but is not limited to, holding such shares in a margin account. Please see the Company's Policy on Hedging and customary individual background checks Pledging Company Stock for more information.

**Trading on a Short-Term Basis.** The Company's policy prohibits Corporate Insiders from trading in SpartanNash Securities on a short-term basis; any SpartanNash Securities purchased other than through the exercise of a stock option must be held for a minimum of six months.

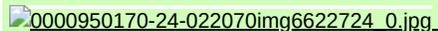
**Bids and Purchases During a Distribution.** Regulation M under the Securities Act regulates trading by certain persons interested in a distribution of securities. On occasion, the Company may issue SpartanNash Securities in a general public offering or in a business combination in exchange for the senior management and key principals of Borrower and Guarantor, and Borrower and Guarantor agree to cooperate in respect securities of the conduct company to be acquired. In these transactions, Regulation M will prohibit certain trading by the Company and its directors and officers during the period the Company distributes SpartanNash Securities. At least one day prior to the filing date of such searches the Company's registration statement for the securities to be offered, the Company and further agree that Borrower shall pay its directors and officers must cease bidding for or purchasing SpartanNash Securities to Administrative Agent on demand the reasonable costs and charges for such searches. be distributed.

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**21.10 SpartanNash Company Insider Trading Policy** Counterparts, Etc , August 23, 2023 . This Agreement or any Page 9 of the other Financing Agreements may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement or any of the other Financing Agreements by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement or any of such other Financing Agreements. Any party delivering an executed counterpart of any such agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.**11**

**21.11 Acknowledgement**

Exhibit 19

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**Potential Civil and Consent Criminal Penalties and Disciplinary Action**

The penalties for violation of insider trading laws are severe. An individual who trades on (or tips) Material Nonpublic Information is subject to Bail-In U.S. civil penalties of Affected Financial Institutions. Notwithstanding anything up to three times the contrary profit gained or loss avoided, U.S. criminal penalties of up to \$5,000,000, and/or up to 20 years in jail, as well as any Financing Agreement penalties, civil or in any criminal, under the applicable insider trading laws of other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Financing Agreement, jurisdictions. If the Company fails to take appropriate steps to prevent insider trading, the extent such liability is unsecured, Company and its Directors, officers and other supervisory personnel may be subject to civil penalties of up to the write-down and conversion powers greater of \$1,000,000 or three times the applicable Resolution Authority and agrees and consents profit gained or loss avoided. The Company may also be subject to and acknowledges and agrees potential criminal penalties of up to \$25,000,000.

Insiders who fail to comply with this Policy will be bound by: subject to appropriate disciplinary action, including ineligibility for participation in any Company equity compensation plan or termination of employment, whether or not the failure to comply is also a violation of law.

**Reporting of Violations**

(a) Any Insider who violates the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction prohibitions against insider trading described in full this Policy or in part or cancellation knows of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Agreement; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

**21.12 Acknowledgment Regarding Any Supported QFCs.** To the extent that the Financing Agreements provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Financing Agreements and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a

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“Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Financing Agreements that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Financing Agreements 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.

**21.13 Erroneous Payments.**

(a) Each Lender, each Issuing Bank, each other Bank Product Provider and any other party hereto hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Bank or any Bank Product Provider (or the Lender which is an Affiliate of a Lender, Issuing Bank or Bank Product Provider) or any other Person that has received funds from the Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender, Issuing Bank or Bank Product Provider (each such recipient, a “Payment Recipient”) that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment

Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 13.13(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "Erroneous Payment"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim

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or counterclaim by the Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an "Erroneous Payment Return Deficiency"), then at the sole discretion of the Administrative Agent and upon the Administrative Agent's written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Loans") to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent's applicable lending affiliate (such assignee, the "Agent Assignee") in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans

(but not Commitments) of the Erroneous Payment Impacted Loans, the “Erroneous Payment Deficiency Assignment”) plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Agent Assignee as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, following the effectiveness of the Erroneous Payment Deficiency Assignment, the Administrative Agent may make a cashless reassignment to the applicable assigning Lender of any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such reassignment all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and

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conditions of Section 13.6 or Section 13.7 and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action violation by any other Person. person, must report the violation immediately to the Chief Legal Officer.

(e) Each party hereto hereby agrees that (x)

**Distribution of Insider Trading Policy**

The Chief Legal Officer of the Company will cause a copy of the Insider Trading Policy to be distributed or made available to all Insiders. All Insiders must confirm their receipt and understanding of the policy to the Chief Legal Officer in writing. The Chief Legal Officer of the Company may authorize variances in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Financing Agreement, or otherwise payable or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under this Section 13.13 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrowers or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrowers or any other Loan Party for the purpose of making for a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 13.13 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Financing Agreement.

(g) The provisions of this Section 13.13 to the contrary notwithstanding, (i) nothing in this Section 13.13 will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment and (ii) there will only be deemed to be a recovery of the Erroneous Payment to the extent that the Administrative Agent has received payment from the Payment Recipient in immediately

available funds the Erroneous Payment Return, whether directly from the Payment Recipient, as a result of the exercise by the Administrative Agent of its rights of subrogation or set off as set forth above in clause (e) or as a result of the receipt by Agent Assignee of a payment of the outstanding principal balance of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment, but excluding any other amounts in respect thereof (it being agreed that any payments of interest, fees, expenses or other amounts (other than principal) received by Agent Assignee in respect of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment shall be the sole property of the Agent Assignee and shall not constitute a recovery of the Erroneous Payment).

**21.14 Rates.** The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to Adjusted Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR or any other Benchmark,

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any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 3.4, will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Adjusted Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to a Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain Adjusted Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## **SECTION 22. ACKNOWLEDGMENT AND RESTATEMENT**

**22.1 Existing Obligations.** Borrowers and Guarantors hereby acknowledge, confirm and agree that (a) Existing Spartan Borrowers are indebted to Administrative Agent and Lenders for loans and advances to Existing Spartan Borrowers under the Existing Spartan Credit Agreement, as of the close of business on November 18, 2013, in the aggregate principal amount of \$56,607,277.70 and the aggregate amount of \$550,000 in respect of Letter of Credit Obligations (as defined in the Existing Spartan Credit Agreement) and (b) Existing Nash-Finch Borrowers are indebted to Administrative Agent and Lenders for loans and advances to Existing Nash-Finch Borrowers under the Existing Nash-Finch Credit Agreement, as of the close of business on November 18, 2013, in the aggregate principal amount of \$373,542,053 and the aggregate amount of \$13,685,284 in respect of L/C Obligations (as defined in the Existing Nash-Finch Credit Agreement), in each case, together with all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally owing by Borrowers and Guarantors to

Administrative Agent and Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever.

#### 22.2 Acknowledgment of Security Interests.

(a) Borrowers and Guarantors hereby acknowledge, confirm and agree that Administrative Agent has and shall continue to have a security interest in and lien upon the Collateral heretofore granted to Administrative Agent in connection with the Existing Credit Agreements and the Existing Nash-Finch Security Agreement by each Borrower and Guarantor which is a party thereto.

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(b) The liens and security interests of Administrative Agent in the Collateral granted by each Borrower and Guarantor pursuant to the Existing Credit Agreements and the Existing Nash-Finch Security Agreement shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such liens and security interests under or in connection with the Existing Credit Agreements and the Existing Nash-Finch Security Agreement.

#### 22.3 Existing Credit Agreements and Existing Nash-Finch Security Agreement.

Borrowers and Guarantors hereby acknowledge, confirm and agree that, immediately prior to giving effect to this Agreement, (a) the Existing Credit Agreements and the Existing Nash-Finch Security Agreement are each in full force and effect as of the Effective Date, and (b) the agreements and obligations of Borrowers and Guarantors contained in the Existing Credit Agreements and the Existing Nash-Finch Security Agreement constitute the legal, valid and binding obligations of Borrowers and Guarantors against them in accordance with their respective terms and Borrowers and Guarantors have no valid defense to the enforcement of such obligations.

#### 22.4 Restatement.

(a) Except as otherwise stated in this Section 14, as of the Effective Date, the terms, conditions, agreements, covenants, representations and warranties set forth in the Existing Credit Agreements and the Existing Nash-Finch Security Agreement are hereby amended and restated in their entirety, and as so amended and restated, replaced and superseded, by the terms, conditions, agreements, covenants, representations and warranties procedures set forth in this Agreement. The amendment Policy, provided that those variances are consistent with the general purpose of this Policy and restatement contained herein shall not, applicable securities laws. Any such variance must be confirmed in and of itself, in writing.

Inquiries regarding any manner, be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of the Indebtedness and other obligations and liabilities provisions or procedures of Borrowers and Guarantors evidenced by or arising under the Existing Credit Agreements and the Existing Nash-Finch Security Agreement (except this Policy should be directed to the extent any such Indebtedness, obligations or liabilities are actually paid or performed on the Effective Date), and the liens securing such Indebtedness and other obligations and liabilities, which shall not in any manner be impaired, limited, terminated, waived or released.

(b) All of the Obligations in respect of the Existing Spartan Loans, the Existing Nash-Finch Loans and the Existing Letters of Credit (to the extent not paid) and all accrued and unpaid interest and fees with respect thereto (to the extent not actually paid pursuant to this Agreement) shall be deemed to be Obligations of Borrowers and Guarantors pursuant to the terms hereof. Chief Legal Officer (616-878-2200).

IN WITNESS WHEREOF, Administrative Agent, Lenders, Borrowers and Guarantors have caused these presents to be duly executed as  
 SpartanNash Company Insider Trading Policy, August 23, 2023 Page 10 of the day and year first above written.11

Exhibit 19



Revision Log

<p>Version :</p>	<p>Date:</p>	<p>ADMINISTRATIVE AGENT</p> <p>WELLS FARGO CAPITAL FINANCE, LLC, as Administrative Agent, Issuing Bank, Swing Line Lender and a Lender</p> <p>By: _____ _____ _____</p> <p>Title: _____ _____ _____ Editor</p> <p>S:</p>	<p>BORROWERS Description of change:</p>
<p>0.0</p>	<p>[Date ]</p>	<p>[Name</p> <p>SPARTANNASH COMPANY, formerly known as Spartan Stores, Inc.</p> <p>By: _____ _____ _____</p> <p>Title: _____ _____ _____ _____, Title]</p>	<p>Released</p>
<p>SPA RTA</p>	<p>CAITO FOODS, LLC</p>	<p>SpartanNash Logistics, LLC</p>	

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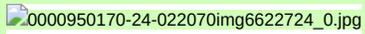
SPARTANNASH PROCUREMENT, LLC

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

Title: \_\_\_\_\_

	S, INC. SPA RTA N PRO PER TIES MAN AGE MEN T, INC. SPA RTA N STO RES FUEL , LLC		
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Exhibit 19



**POLICIES AND PROCEDURES**

<b>Policy Name:</b>	SpartanNash Company Guidelines for Rule 10b5-1 Trading Plans
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<b>Document Owner:</b>	<b>Ileana McAlary,</b> EVP Chief Legal Officer & Secretary	<b>By:</b> _____ _____ _____ _____ _____ <b>Title:</b> _____ _____ _____ _____ <b>Effe</b> <b>ctive:</b>	<b>August</b> 23, 2023	<b>Updated:</b>	August 23, 2023
<b>Responsible Executive:</b>	<b>Ileana McAlary, EVP Chief Legal Officer &amp; Secretary</b>	<b>Editors:</b>	<b>Ileana McAlary, EVP Chief Legal Officer &amp; Secretary</b>		
<b>CONFIDENTIAL:</b> This document is the property of SpartanNash and may not be copied or disclosed to others without authorization from the document owner or responsible executive. Additionally, this policy may not be amended or modified without the approval of the SpartanNash Chief Legal Officer.					

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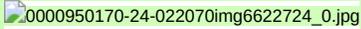
- MSM HOLDCO, LLC
- MARTIN'S SUPER MARKETS L.L.C.
- MARTIN'S SUPER MARKETS OF ELKHART L.L.C.
- MARTIN'S SUPER MARKETS OF ELKHART EAST L.L.C.
- MARTIN'S SUPER MARKETS OF LOGANSPORT L.L.C.
- MARTIN'S SUPER MARKETS OF NILES L.L.C.
- MARTIN'S SUPER MARKETS OF NAPPANEE L.L.C.
- MARTIN'S SUPER MARKETS OF ST. JOSEPH L.L.C. MARTIN'S SUPER MARKETS OF STEVENSVILLE L.L.C.
- MARTIN'S MO LLC
- COUNTY DEVELOPMENT LLC
- MARTIN'S WEST LLC
- 200 ELKHART AVE LLC
- MARTIN'S INTEGRATED PHARMACY SERVICES LLC EXECUTIVE SUMMARY

SpartanNash Company (together with its subsidiaries, the "Company") prohibits all Insiders, including directors, officers, associates, advisors and consultants who work with us from buying or selling securities when any such persons are aware of Material Nonpublic Information about the Company. The only exception to this prohibition is for transactions by Corporate Insiders conducted pursuant to a written trading plan that meets the requirements of Rule 10b5-1 of the Securities Exchange Act of 1934, as amended, and the conditions set forth in these guidelines (the "Guidelines"). We refer to such plans as "Rule 10b5-1 Trading Plans." Capitalized terms not defined in these guidelines have the meaning provided in the SpartanNash Company Insider Trading Policy.

Any Corporate Insider who wishes to enter into a Rule 10b5-1 Trading Plan must obtain approval of such Rule 10b5-1 Trading Plan. Approval may be withheld in the Company's sole discretion. To implement a plan, you must first complete a Request for Clearance to Engage in Transactions in SpartanNash Securities and submit the completed form and proposed plan to the Chief Legal Officer for approval.

***These Guidelines are subject to all federal securities laws requirements, including any final rules that may be adopted by the Securities and Exchange Commission relating to 10b5-1 plans.***

**By:** *SpartanNash Company Guidelines for Rule 10b5-1 Trading Plans, August 23, 2023 Page 1 of 5*

Title **Table of Contents**

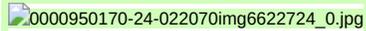
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Exhibit 19

**Affirmative Defense under Rule 10b5-1**

Rule 10b5-1 provides a defense from insider trading liability. To be eligible to rely on this defense, a Corporate Insider must enter into a written trading plan for transactions in SpartanNash Securities that meets certain conditions specified in Rule 10b5-1. If a trading plan meets the requirements of Rule 10b5-1, our securities may be purchased or sold under the Rule 10b5-1 Trading Plan without regard to certain insider trading restrictions, such as the possession of Material Nonpublic Information.

Rule 10b5-1 requires that a person enter into a written plan in good faith and when he or she is not aware of Material Nonpublic Information. Once a Rule 10b5-1 Trading Plan is adopted, the Corporate Insider who entered into the Rule 10b5-1 Trading Plan may not exercise any influence over the amount of securities to be traded, the price at which they are to be traded or the date of the trade. The Rule 10b5-1 Trading Plan must either specify the amount, pricing and timing of transactions in advance or delegate discretion on these matters to an independent third party. Once a Rule 10b5-1 Trading Plan is in place, the Corporate Insider should not trade in SpartanNash Securities that are subject to that plan, even during open Trading Windows, except with the prior written approval of the Company's Chief Legal Officer.

**Broker**

We have selected UBS as the brokerage firm with which any associate may establish a Rule 10b5-1 Trading Plan. The number of shares of SpartanNash Securities to be sold, the price at which the shares may be sold or the date(s) on which the shares may be sold under such a plan shall be determined by the person entering into the Rule 10b5-1 Trading Plan. The plan should also have a beginning and ending date. UBS can help you devise the trading parameters that meet your specific requirements. In order to initiate the process for implementing a Rule 10b5-1 Trading Plan with UBS, you should contact the Company's Director of Benefits or his/her delegate at 616-878-2699.

**Restrictions**

The following restrictions apply to all Rule 10b5-1 Trading Plans entered into by our Corporate Insiders:

- You may not enter into, modify or terminate a Rule 10b5-1 Trading Plan during a blackout period or while you are in possession of Material Nonpublic Information.** All plans must be executed during a Trading Window. Additionally, all plans must include representations that (a) you are entering into the plan in good faith, and not as part of a plan or scheme to shield trades that would otherwise be considered violations of the insider trading laws, and (b) that you are not in possession of any Material Nonpublic Information regarding the Company at the time of adoption of the plan.
- You may have only one active plan at a time and it must be the sole outstanding Rule 10b5-1 Trading Plan for such Corporate Insider, unless an exception is approved in advance by the Chief Legal Officer after evaluating whether any such additional plan would be permitted by Rule 10b5-1.

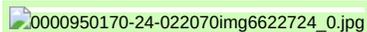
- A plan may not be entered into, terminated, or modified without the prior approval of the Chief Legal Officer and only during an open Trading Window. Early terminations of, or modifications to, a Rule 10b5-1 Trading Plan are strongly discouraged as any modification may eliminate the legal protection against claims of insider trading provided for all prior transactions under the plan. Approval of any modification or termination will be reserved for highly unusual or extraordinary circumstances.  
In any event, entry into new plans and amendments or terminations of existing plans can only be made when the participant does not possess Material Nonpublic Information. Amendments of existing plans must meet all requirements of a newly adopted plan, as if adopted on the date of modification.

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#### Exhibit 19



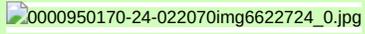
- Any Rule 10b5-1 Trading Plan must have a duration of at least six (6) months and no more than twenty four (24) months.
- For Company directors and Section 16 officers, no trade under a Rule 10b5-1 Trading Plan may be triggered earlier than the later to occur of (i) 90 days after the date the Rule 10b5-1 Trading Plan is executed or modified, or (ii) 2 business days after the filing of the Company's Form 10-Q (or Form 10-K for any plan executed or modified during the fourth fiscal quarter) for the fiscal quarter in which the plan was executed or modified, up to a maximum of 120 days after the date the plan is executed. For other Corporate Insiders, such individuals may not commence purchases or sales under a Rule 10b5-1 Trading Plan until at least thirty (30) calendar days following the date you entered into or modified the Rule 10b5-1 Trading Plan. For the avoidance of doubt, a plan may not have its first transaction during the Trading Window in which it is executed.
- If such Rule 10b5-1 Trading Plan is a single-trade plan, it must be the sole single-trade plan within any consecutive 12-month period.
- During the term of a Rule 10b5-1 Trading Plan, you should have no communications with UBS's 10b5-1 Group, with the exception of trade execution notices.
- In general, when you have a Rule 10b5-1 Trading Plan in effect, you should avoid undertaking any discretionary trades (including any discretionary option exercises followed by sales of shares of Company common stock). Sales outside of the Rule 10b5-1 Trading Plan will be viewed in hindsight (possibly in the context of litigation) and, in certain circumstances, could undermine the legal protection otherwise provided by the Rule 10b5-1 Trading Plan. Trades outside the Rule 10b5-1 Trading Plan could also be viewed, in certain circumstances, as violating the prohibition against entering into any corresponding or hedging transaction during the term of the plan. If, notwithstanding the foregoing, you wish to undertake a discretionary trade, you may do so only if you have obtained the approval of the Chief Legal Officer.
- Suspensions in transactions under a Rule 10b5-1 Trading Plan are strongly discouraged as a suspension may eliminate the legal protection against claims of insider trading provided for all prior transactions under the plan. You must notify the Chief Legal Officer of any proposed suspension of your Rule 10b5-1 Trading Plan at least two (2) business days prior to the proposed suspension date.
- You or UBS must provide prompt notice of each transaction under your Rule 10b5-1 Trading Plan so that the Company can timely file a Form 4 report with respect to such transaction, if applicable and provided such information regarding your trading activity is provided to the Company in the manner contemplated by these Guidelines. Such notice shall be provided to Human Resources.
- If you are a Company director or Section 16 officer, you or UBS must, on a timely basis, make any required filings of Form 144 with respect to transactions under your Rule 10b5-1 Trading Plan.

Additionally, the Company requires that you act in good faith with respect to the Rule 10b5-1 Trading Plan for the entire duration of the plan.

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*SpartanNash Company Guidelines for Rule 10b5-1 Trading Plans, August 23, 2023 Page 4 of 5*

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**Approval**

Any Rule 10b5-1 Trading Plan must be submitted for approval to the Chief Legal Officer, at least five (5) business days prior to entry into the plan. No further pre-approval of transactions conducted pursuant to the Rule 10b5-1 Trading Plan will be required.

If a proposed plan does not conform to Rule 10b5-1 or to these Guidelines, it may be rejected.

**Revision Log**

Version	Date:	Editors:	Description of change:
0.0	[Date ]	[Name, Title]	Released
BANK OF AMERICA, N.A., as a Lender			
By:			
Title:			

AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

ASSIGNMENT AND ACCEPTANCE AGREEMENT

This ASSIGNMENT AND ACCEPTANCE AGREEMENT (this "Assignment and Acceptance") dated as of \_\_\_\_\_, 20\_\_ is made between \_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee").

WITNESSETH:

WHEREAS, Wells Fargo Capital Finance, LLC, in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lenders (in such capacity, "Administrative Agent"), and the financial institutions which are parties to the Loan Agreement as lenders (individually, each a "Lender" and collectively, "Lenders") have entered or are about to enter into financing arrangements pursuant to which Administrative Agent and Lenders may make loans and advances and provide other financial accommodations to \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively, "Borrowers") as set forth in the Amended and Restated Loan and Security Agreement, dated November 19, 2013, by and among Borrowers, certain of their affiliates, Administrative Agent and Lenders (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements");

WHEREAS, as provided under the Loan Agreement, Assignor committed to making Loans (the "Committed Loans") to Borrowers in an aggregate amount not to exceed \$ \_\_\_\_\_ (the "Commitment");

WHEREAS, Assignor wishes to assign to Assignee [part of the] [all] rights and obligations of Assignor under the Loan Agreement in respect of its Commitment in an amount equal to \$ \_\_\_\_\_ (the "Assigned Commitment Amount") on the terms and subject to the conditions set forth herein and Assignee wishes to accept assignment of such rights and to assume such obligations from Assignor on such terms and subject to such conditions;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

1. Assignment and Acceptance.

(a) Subject to the terms and conditions of this Assignment and Acceptance, Assignor hereby sells, transfers and assigns to Assignee, and Assignee hereby purchases, assumes and undertakes from Assignor, without recourse and without representation or warranty

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(except as provided in this Assignment and Acceptance) an interest in (i) the Commitment and each of the Committed Loans of Assignor and (ii) all related rights, benefits, obligations, liabilities and indemnities of the Assignor under and in connection with the Loan Agreement and the other Financing Agreements, so that after giving effect thereto, the Commitment of Assignee shall be as set forth below and the Pro Rata Share of Assignee shall be [ \_\_\_\_\_ ( \_\_\_ %) percent of the Tranche A Revolving Loans] [ \_\_\_\_\_ ( \_\_\_ %) percent of the Tranche A-1 Revolving Loans].

(b) With effect on and after the Effective Date (as defined in Section 5 hereof), Assignee shall be a party to the Loan Agreement and succeed to all of the rights and be obligated to perform all of the obligations of a Lender under the Loan Agreement, including the requirements concerning confidentiality and the payment of indemnification, with a Commitment in an amount equal to the Assigned Commitment Amount. Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Agreement are required to be performed by it as a Lender. It is the intent of the parties hereto that the Commitment of Assignor shall, as of the Effective Date, be reduced by an amount equal to the Assigned Commitment Amount and Assignor shall relinquish its rights and be released from its obligations under the Loan Agreement to the extent such obligations have been assumed by Assignee; provided, that, Assignor shall not relinquish its rights under Sections 2.1, 6.4, 6.8 and 6.9 of the Loan Agreement to the extent such rights relate to the time prior to the Effective Date.

(c) After giving effect to the assignment and assumption set forth herein, on the Effective Date [Assignee's Tranche A Commitment will be \$ \_\_\_\_\_] [Assignee's Tranche A-1 Commitment will be \$ \_\_\_\_\_].

(d) After giving effect to the assignment and assumption set forth herein, on the Effective Date [Assignor's Tranche A Commitment will be \$ \_\_\_\_\_ (as such amount may be further reduced by any other assignments by Assignor on or after the Effective Date)] [Assignor's Tranche A-1 Commitment will be \$ \_\_\_\_\_ (as such amount may be further reduced by any other assignments by Assignor on or after the Effective Date)].

## 2. Payments.

(a) As consideration for the sale, assignment and transfer contemplated in Section 1 hereof, Assignee shall pay to Assignor on the Effective Date in immediately available funds an amount equal to \$ \_\_\_\_\_, representing Assignee's Pro Rata Share of the principal amount of all Committed Loans.

(b) Assignee shall pay to Administrative Agent the processing fee in the amount specified in Section 13.7(a) of the Loan Agreement.

3. Reallocation of Payments. Any interest, fees and other payments accrued to the Effective Date with respect to the Commitment, Committed Loans and outstanding Letter of Credit Accommodations shall be for the account of Assignor. Any interest, fees and other payments accrued on and after the Effective Date with respect to the Assigned Commitment Amount shall be for the account of Assignee. Each of Assignor and Assignee agrees that it will

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hold in trust for the other party any interest, fees and other amounts which it may receive to which the other party is entitled pursuant to the preceding sentence and pay to the other party any such amounts which it may receive promptly upon receipt.

4. Independent Credit Decision. Assignee acknowledges that it has received a copy of the Loan Agreement and the Schedules and Exhibits thereto, together with copies of the most recent financial statements of Parent and its Subsidiaries, and such other documents and information as it has deemed appropriate to make its own credit and legal analysis and decision to enter into this Assignment and Acceptance and agrees that it will, independently and without reliance upon Assignor, Administrative Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit and legal decisions in taking or not taking action under the Loan Agreement.

## 5. Effective Date; Notices.

(a) As between Assignor and Assignee, the effective date for this Assignment and Acceptance shall be \_\_\_\_\_, 20\_\_ (the "Effective Date"); provided, that, the following conditions precedent have been satisfied on or before the Effective Date:

(i) this Assignment and Acceptance shall be executed and delivered by Assignor and Assignee;

(ii) the consent of Administrative Agent as required for an effective assignment of the Assigned Commitment Amount by Assignor to Assignee shall have been duly obtained and shall be in full force and effect as of the Effective Date;

(iii) written notice of such assignment, together with payment instructions, addresses and related information with respect to Assignee, shall have been given to Lead Borrower and Administrative Agent;

(iv) Assignee shall pay to Assignor all amounts due to Assignor under this Assignment and Acceptance; and

(v) the processing fee referred to in Section 2(b) hereof shall have been paid to Administrative Agent.

(b) Promptly following the execution of this Assignment and Acceptance, Assignor shall deliver to Lead Borrower and Administrative Agent for acknowledgment by Administrative Agent, a Notice of Assignment in the form attached hereto as Schedule 1.

**[6. Administrative Agent. [INCLUDE ONLY IF ASSIGNOR IS AN AGENT]]**

(a) Assignee hereby appoints and authorizes Assignor in its capacity as Administrative Agent to take such action as agent on its behalf to exercise such powers under the Loan Agreement as are delegated to Administrative Agent by Lenders pursuant to the terms of the Loan Agreement.

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(b) Assignee shall assume no duties or obligations held by Assignor in its capacity as Administrative Agent under the Loan Agreement.]

**7. Withholding Tax.** Assignee (a) represents and warrants to Assignor, Administrative Agent and Borrowers that under applicable law and treaties no tax will be required to be withheld by Assignee, Administrative Agent or Borrowers with respect to any payments to be made to Assignee hereunder or under any of the Financing Agreements, (b) agrees to furnish (if it is organized under the laws of any jurisdiction other than the United States or any State thereof) to Administrative Agent and Borrowers prior to the time that Administrative Agent or Borrowers are required to make any payment of principal, interest or fees hereunder, duplicate executed originals of either U.S. Internal Revenue Service Form W-8BEN or W-8ECI, as applicable (wherein Assignee claims entitlement to the benefits of a tax treaty that provides for a complete exemption from U.S. federal income withholding tax on all payments hereunder) and agrees to provide new such Forms upon the expiration of any previously delivered form or comparable statements in accordance with applicable U.S. law and regulations and amendments thereto, duly executed and completed by Assignee, and (c) agrees to comply with all applicable U.S. laws and regulations with regard to such withholding tax exemption.

**8. Representations and Warranties.**

(a) Assignor represents and warrants that (i) it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any security interest, lien, encumbrance or other adverse claim, (ii) it is duly organized and existing and it has the full power and authority to take, and has taken, all action necessary to execute

and deliver this Assignment and Acceptance and any other documents required or permitted to be executed or delivered by it in connection with this Assignment and Acceptance and to fulfill its obligations hereunder, (iii) no notices to, or consents, authorizations or approvals of, any Person are required (other than any already given or obtained) for its due execution, delivery and performance of this Assignment and Acceptance, and apart from any agreements or undertakings or filings required by the Loan Agreement, no further action by, or notice to, or filing with, any Person is required of it for such execution, delivery or performance, and (iv) this Assignment and Acceptance has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of Assignor, enforceable against Assignor in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization and other laws of general application relating to or affecting creditors' rights and to general equitable principles.

(b) Assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Agreement or any of the other Financing Agreements or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Agreement or any other instrument or document furnished pursuant thereto. Assignor makes no representation or warranty in connection with, and assumes no responsibility with respect to, the solvency, financial condition or statements of Borrowers, Guarantors or any of their respective Affiliates, or the performance or observance by Borrowers, Guarantors or any other Person, of any of its respective obligations under the Loan Agreement or any other instrument or document furnished in connection therewith.

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(c) Assignee represents and warrants that (i) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Assignment and Acceptance and any other documents required or permitted to be executed or delivered by it in connection with this Assignment and Acceptance, and to fulfill its obligations hereunder, (ii) no notices to, or consents, authorizations or approvals of, any Person are required (other than any already given or obtained) for its due execution, delivery and performance of this Assignment and Acceptance, and apart from any agreements or undertakings or filings required by the Loan Agreement, no further action by, or notice to, or filing with, any Person is required of it for such execution, delivery or performance; and (iii) this Assignment and Acceptance has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of Assignee, enforceable against Assignee in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization and other laws of general application relating to or affecting creditors' rights to general equitable principles.

9. Intercreditor Agreement. [INCLUDE ONLY IF QUALIFIED DEBT INTERCREDITOR AGREEMENT HAS BEEN ENTERED INTO] Assignee acknowledges and agrees that it has received a copy of the Qualified Debt Intercreditor Agreement and that it shall be bound by the terms thereof as a Lender as such term is defined therein and hereby shall be deemed to make all representations and warranties made by a Lender thereunder. Without limiting any other rights or authorization of Administrative Agent, Assignee hereby specifically authorizes Administrative Agent to take such actions as are provided for to be taken by it under the terms of the Qualified Debt Intercreditor Agreement on behalf of Assignee as a Lender.]

10. Further Assurances. Assignor and Assignee each hereby agree to execute and deliver such other instruments, and take such other action, as either party may reasonably request in connection with the transactions contemplated by this Assignment and Acceptance, including the delivery of any notices or other documents or instruments to Borrowers or

Administrative Agent, which may be required in connection with the assignment and assumption contemplated hereby.

**11. Miscellaneous.**

(a) Any amendment or waiver of any provision of this Assignment and Acceptance shall be in writing and signed by the parties hereto. No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof and any waiver of any breach of the provisions of this Assignment and Acceptance shall be without prejudice to any rights with respect to any other for further breach thereof.

(b) All payments made hereunder shall be made without any set-off or counterclaim.

(c) Assignor and Assignee shall each pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Assignment and Acceptance.

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(d) This Assignment and Acceptance may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

(e) THIS ASSIGNMENT AND ACCEPTANCE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF \_\_\_\_\_. Assignor and Assignee each irrevocably submits to the non-exclusive jurisdiction of any State or Federal court sitting in \_\_\_\_\_ County, \_\_\_\_\_ over any suit, action or proceeding arising out of or relating to this Assignment and Acceptance and irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such \_\_\_\_\_ State or Federal court. Each party to this Assignment and Acceptance hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.

(f) ASSIGNOR AND ASSIGNEE EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT AND ACCEPTANCE, THE LOAN AGREEMENT, ANY OF THE OTHER FINANCING AGREEMENTS OR ANY RELATED DOCUMENTS AND AGREEMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS (WHETHER ORAL OR WRITTEN).

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Acceptance to be executed and delivered by their duly authorized officers as of the date first above written.

[ASSIGNOR]

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

Title: \_\_\_\_\_

[ASSIGNEE]

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

Title: \_\_\_\_\_

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**SCHEDULE 1**

**NOTICE OF ASSIGNMENT AND ACCEPTANCE**

\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn.: \_\_\_\_\_

Re: \_\_\_\_\_

Ladies and Gentlemen:

Wells Fargo Capital Finance, LLC, in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lenders (in such capacity, "Administrative Agent"), and the financial institutions which are parties to the Loan Agreement as lenders (individually, each a "Lender" and collectively, "Lenders") have entered or are about to enter into financing arrangements pursuant to which Administrative Agent and Lenders may make loans and advances and provide other financial accommodations to \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively, "Borrowers") as set forth in the Amended and Restated Loan and Security Agreement, dated November 19, 2013, by and among Borrowers, certain of their affiliates, Administrative Agent and Lenders (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements"). Capitalized terms not otherwise defined herein shall have the respective meanings ascribed thereto in the Loan Agreement.

1. We hereby give you notice of, and request your consent to, the assignment by \_\_\_\_\_ (the "Assignor") to \_\_\_\_\_ (the "Assignee") such that after giving effect to the assignment Assignee shall have an interest equal to \_\_\_\_\_ (\_\_\_\_%) percent of the [Tranche A Commitments] [Tranche A-1 Commitments] pursuant to the Assignment and Acceptance Agreement attached hereto (the "Assignment and Acceptance"). We understand that the Assignor's Commitment shall be reduced by \$ \_\_\_\_\_, as the same may be further reduced by other assignments on or after the Effective Date.

2. Assignee agrees that, upon receiving the consent of Administrative Agent to such assignment, Assignee will be bound by the terms of the Loan Agreement as fully and to the same extent as if the Assignee were the Lender originally holding such interest under the Loan

Agreement.

3. The following administrative details apply to Assignee:

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(A) Notice address:

Assignee name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopier: \_\_\_\_\_

(B) Payment instructions:

Account No. \_\_\_\_\_

At: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reference: \_\_\_\_\_

Attention: \_\_\_\_\_

4. You are entitled to rely upon the representations, warranties and covenants of each of Assignor and Assignee contained in the Assignment and Acceptance.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Notice of Assignment and Acceptance to be executed by their respective duly authorized officials, officers or agents as of the date first above mentioned.

Very truly yours,

[NAME OF ASSIGNOR]

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

Title: \_\_\_\_\_

[NAME OF ASSIGNEE]

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

Title: \_\_\_\_\_

ACKNOWLEDGED AND ASSIGNMENT  
CONSENTED TO:

WELLS FARGO CAPITAL FINANCE, LLC,  
as Administrative Agent

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

Title: \_\_\_\_\_

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**EXHIBIT E**  
**TO**  
**AMENDED AND RESTATED**  
**LOAN AND SECURITY AGREEMENT**

**Compliance Certificate**

To: Wells Fargo Capital Finance, LLC,  
as Administrative Agent  
One Boston Place  
Boston, Massachusetts 02108

**Ladies and Gentlemen:**

I hereby certify to you pursuant to Section 9.6 of the Loan Agreement (as defined below) as follows:

1. I am the duly elected Chief Financial Officer of \_\_\_\_\_, a \_\_\_\_\_ corporation, \_\_\_\_\_, a \_\_\_\_\_ corporation and \_\_\_\_\_, a \_\_\_\_\_ corporation (collectively, "Borrowers"). Capitalized terms used herein without definition shall have the meanings given to such terms in the Amended and Restated Loan and Security Agreement, dated November 19, 2013, by and among Wells Fargo Capital Finance, LLC, as agent for the financial institutions party thereto as lenders (in such capacity, "Administrative Agent") and the financial institutions party thereto as lenders (collectively, "Lenders"), Borrowers and certain of their affiliates (as amended, modified or supplemented, from time to time, the "Loan Agreement").

2. I have reviewed the terms of the Loan Agreement, and have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and the financial condition of Borrowers and Guarantors, during the immediately preceding fiscal four (4) week period.

3. The review described in Section 2 above did not disclose the existence during or at the end of such fiscal four (4) week period, and I have no knowledge of the existence and continuance on the Effective Date, of any condition or event which constitutes a Default or an Event of Default, except as set forth on Schedule I attached hereto. Described on Schedule I attached hereto are the exceptions, if any, to this Section 3 listing, in detail, the nature of the condition or event, the period during which it has existed and the action which any Borrower or Guarantor has taken, is taking, or proposes to take with respect to such condition or event.

4. I further certify that, based on the review described in Section 2 above, no Borrower or Guarantor has at any time during or at the end of the immediately preceding fiscal four (4) week period, except as specifically described on Schedule II attached hereto or as permitted by the Loan Agreement, done any of the following:

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- (a) Changed its respective corporate name, or transacted business under any trade name, style, or fictitious name, other than those previously described to you and set forth in the Financing Agreements.
- (b) Changed the location of its chief executive office, changed its jurisdiction of incorporation, changed its type of organization or changed the location of or

disposed of any of its properties or assets (other than pursuant to the sale of inventory in the ordinary course of its business or as otherwise permitted by Section 9.7 of the Loan Agreement), or established any new asset locations.

(c) Materially adversely changed the terms upon which it sells goods (including sales on consignment) or provides services.

(d) Permitted or suffered to exist any security interest in or liens on any of its properties, whether real or personal, other than as specifically permitted in the Financing Agreements.

5. Attached hereto as Schedule III are the calculations used in determining whether Borrowers and Guarantors are in compliance with the covenants set forth in Section 9.18 of the Loan Agreement for such fiscal period.

6. The foregoing certifications are made and delivered this day of \_\_\_\_\_, 20\_\_.

Very truly yours,

\_\_\_\_\_

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

Title: \_\_\_\_\_

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**EXHIBIT F  
TO  
AMENDED AND RESTATED  
LOAN AND SECURITY AGREEMENT**

**Commitments**

<u>Lender</u>	<u>Total Commitment</u>	<u>Tranche A Commitment</u>	<u>Tranche A-1 Commitment</u>
Wells Fargo Capital Finance, LLC	\$272,500,000	\$260,000,000	\$12,500,000
Bank of America, N.A.	\$267,500,000	\$255,000,000	\$12,500,000
Fifth Third Bank	\$135,000,000	\$125,000,000	\$10,000,000
BMO Harris Bank, N.A.	\$105,000,000	\$100,000,000	\$5,000,000
JPMorgan Chase Bank, N.A.	\$90,000,000	\$90,000,000	-
U.S. Bank National Association	\$55,000,000	\$55,000,000	-
Compeer Financial, PCA	\$50,000,000	\$50,000,000	-
PNC Bank, National Association	\$40,000,000	\$40,000,000	-
<b>Total</b>	<b><u>\$1,015,000,000</u></b>	<b><u>\$975,000,000</u></b>	<b><u>\$40,000,000</u></b>

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**EXHIBIT H**

TO  
AMENDED AND RESTATED  
LOAN AND SECURITY AGREEMENT  
Form of SOFR Loan Notice

Wells Fargo Capital Finance, LLC,  
as Administrative Agent  
One Boston Place  
Boston, Massachusetts 02108

Ladies and Gentlemen:

Reference is hereby made to the Amended and Restated Loan and Security Agreement, dated November 19, 2013 (as amended, restated, supplemented, or otherwise modified from time to time, the "Loan Agreement"), by and among SpartanNash Company a Michigan corporation ("Lead Borrower"), the affiliates of Lead Borrower party thereto, the lenders identified on the signature pages thereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "Lender" and, collectively, the "Lenders"), and Wells Fargo Capital Finance, LLC, a Delaware limited liability company, in its capacity as administrative and collateral agent **Guidelines** for Lenders (in such capacity, "Administrative Agent"). Capitalized terms used herein, but not specifically defined herein, shall have the meanings ascribed to them in the Loan Agreement.

This SOFR Loan Notice represents Borrowers' request for a borrowing consisting of a SOFR Rate Loan in the amount of \$ \_\_\_\_\_ (the "SOFR Advance").

The SOFR Advance will have an Interest Period of [1, 3, or 6] month(s).

Such Interest Period is requested to commence on .

This SOFR Loan Notice further confirms Borrowers' acceptance, for purposes of determining the rate of interest based on SOFR as determined pursuant to the Loan Agreement.

Lead Borrower represents and warrants that (i) as of the date hereof, the representations and warranties of the Borrowers and Guarantors contained in the Loan Agreement and in the other Financing Agreements are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date hereof, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified

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or modified by materiality in the text thereof) as of such earlier date)), (ii) each of the covenants and agreements contained in any Financing Agreement have been performed (to the extent required to be performed on or before the date hereof or each such effective date), and (iii) no Default or Event of Default has occurred and is continuing on the date hereof, nor will any thereof occur after giving effect to the request above.

Dated:

**SPARTANNASH COMPANY RULE 10B5-1 TRADING  
PLANS.**

as Lead Borrower

By August 23, 2023

Page Name: 5 of

Title: 5

Acknowledged by:

**WELLS FARGO CAPITAL FINANCE, LLC,**  
as Administrative Agent

By:

Name:

Title:

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EXHIBIT 21

LIST OF SUBSIDIARIES OF SPARTANNASH COMPANY

Name	Jurisdiction of Formation	Other Names Under Which Business is Conducted
SpartanNash Logistics, LLC	Michigan	
Caito Foods, LLC	Michigan	
Erickson's Diversified Corporation	Wisconsin	
Family Fare, LLC	Michigan	D&W Fresh Market D&W Pharmacy Family Fare Pharmacy Family Fare Supermarkets Forest Hills Pharmacy Forest Hills Foods VG's Food Center VG's Pharmacy
Fresh City Market LLC	Wisconsin	
Gruber's Real Estate, LLC	Michigan	
GLF Transport, LLC	Wisconsin	
GTL Truck Lines, Inc.	Nebraska	
Hinky Dinky Supermarkets	Nebraska	
Market Development, LLC	Michigan	Jefferson Square (in IN) Market Street Plaza (in IN)
Martin's Super Markets, LLC	Indiana	
Martin's Super Markets of Elkhart East LLC	Indiana	
Martin's Super Markets of Elkhart LLC	Indiana	

Martin's Super Markets of Logansport LLC	Indiana	
Martin's Super Markets of Niles LLC	Indiana	
Martin's Super Markets of Nappanee LLC	Indiana	
Martin's Super Markets of St Joseph LLC	Indiana	
Martin's Super Markets of Stevensville LLC	Indiana	
MDV SpartanNash LLC	Delaware	MDV
MSM Holdco, LLC	Indiana	Martin's Super Markets
Martin's MO LLC	Indiana	
County Development LLC	Indiana	
Martin's West LLC	Indiana	
200 Elkhart Ave LLC	Indiana	
Martin's Integrated Pharmacy Services LLC	Indiana	
Nash-Finch Company	Delaware	Dan's Supermarkets Family Fare, Family Fresh Market No Frills Supermarkets SunMart Foods Market, Supermercado Nuestra Familia
Pique Brands, Inc.	Delaware	
Prevo's Family Markets, Inc.	Michigan	D&W Fresh Market D&W Pharmacy Family Fare Pharmacy Family Fare Supermarket
Seaway Food Town, Inc.	Michigan	
Spartan Properties Management, Inc.	Ohio	
SpartanNash Associates, LLC	Michigan	
SpartanNash Procurement, LLC	Michigan	
Spartan Stores Distribution, LLC	Michigan	

Name	Jurisdiction of Formation	Other Names Under Which Business is Conducted
Spartan Stores Fuel, LLC	Michigan	D&W Quick Stop Family Fare Quick Stop Forest Hill Fuel VG's Quick Stop
Super Food Services, Inc.	Delaware	
U Save Foods, Inc.	Nebraska	
Valley Farm Distributing Co.	Ohio	VFD

Exhibit 23

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-110593, 333-110952, 333-129156, 333-145432, 333-161742, 333-161745, 333-161749, 333-186683, 333-49448, 333-65802, 333-66430, 333-71774, 333-72010, 333-75810, 333-96615, 333-192713, 333-100794, 333-204725, 333-238779, 333-265921 on Form S-8, and Registration Statement No. 333-53672 on Form S-3 of our reports dated **March 1, 2023** **February 28, 2024** relating to the consolidated financial statements of SpartanNash Company and subsidiaries (the "Company"), and the effectiveness of the Company's internal control over financial reporting, appearing in the Annual Report on Form 10-K of the Company for the fiscal year ended **December 31, 2022** **December 30, 2023**.

/s/ DELOITTE & TOUCHE LLP

Grand Rapids, Michigan

**March 1, 2023** **February 28, 2024**

Exhibit 24

POWER OF ATTORNEY

The undersigned in his or her capacity as a director of SpartanNash Company, does hereby appoint ILEANA MCALARY and JASON MONACO or either of them, his or her attorneys or attorney, with full power of substitution, to execute in his or her name an Annual Report of SpartanNash Company on Form 10-K for its fiscal year ended **December 31, 2022** **December 30, 2023**, and any amendments to that report, and to file it with the Securities and Exchange Commission or other regulatory authority. Each attorney shall have power and authority to do and perform in the name and on behalf of the undersigned, in any and all capacities, every act to be done in the premises as fully and to all intents and purposes as the undersigned could do in person, and the undersigned hereby ratifies and approves the acts of such attorneys.

Signature: /s/ M. Shân Atkins  
Print Name: M. Shân Atkins  
Name:  
Title: Director  
Date: **March 1, 2023** **February 28, 2024**

Signature: /s/ William R. Voss Fred Bentley, Jr.  
Print Name: **William R. Voss** **Fred Bentley, Jr.**  
Title: Director  
Date: **March 1, 2023** **February 28, 2024**

Signature: /s/ Douglas A. Hacker  
Print Name: Douglas A. Hacker  
Name:  
Title: Chairman of the Board  
Date: **March 1, 2023** **February 28, 2024**

Signature: /s/ Julien Mininberg Kerrie D. MacPherson  
Print Name: **Julien Mininberg** **Kerrie D. MacPherson**  
Title: Director  
Date: **March 1, 2023** **February 28, 2024**

Signature: /s/ Matthew Mannelly Julien R. Mininberg  
Print Name: **Matthew Mannelly** **Julien R. Mininberg**  
Name:  
Title: Director

Signature: /s/ Jaymin B. Patel  
Print Name: Jaymin **B.** Patel  
Title: Director

Date: ~~March 1, 2023~~ February 28, 2024

Signature: /s/ Hawthorne L. Proctor

Print Hawthorne L. Proctor

Name:

Title: Director

Date: ~~March 1, 2023~~ February 28, 2024

Signature: /s/ William R. Voss

Print William R. Voss

Name:

Title: Director

Date: February 28, 2024

Date: ~~March 1, 2023~~ February 28, 2024

Signature: /s/ Pamela S. Puryear, Ph.D.

Print Name: Pamela S. Puryear, PhD Ph.D.

Title: Director

Date: ~~March 1, 2023~~ February 28, 2024

Exhibit 31.1

#### CERTIFICATION

I, Tony B. Sarsam, certify that:

1. I have reviewed this Annual Report on Form 10-K of SpartanNash Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's Board of Directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **March 1, 2023** February 28, 2024

/s/ Tony B. Sarsam

Tony B. Sarsam  
President and Chief Executive Officer  
(Principal Executive Officer)

**Exhibit 31.2**

#### **CERTIFICATION**

I, Jason Monaco, certify that:

1. I have reviewed this Annual Report on Form 10-K of SpartanNash Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's Board of Directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **March 1, 2023** February 28, 2024

/s/ Jason Monaco

Jason Monaco  
Executive Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

Exhibit 32.1

#### CERTIFICATION

Pursuant to 18 U.S.C. § 1350, each of the undersigned hereby certifies in his capacity as an officer of SpartanNash Company (the "Company") that the Annual Report of the Company on Form 10-K for the accounting period ended **December 31, 2022** December 30, 2023 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such report fairly presents, in all material respects, the financial condition of the Company at the end of such period and the results of operations of the Company for such period.

This Certificate is given pursuant to 18 U.S.C. § 1350 and for no other purpose.

Dated: **March 1, 2023** February 28, 2024

/s/ Tony B. Sarsam

Tony B. Sarsam  
President and Chief Executive Officer  
(Principal Executive Officer)

Dated: **March 1, 2023** February 28, 2024

/s/ Jason Monaco

Jason Monaco  
Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

A signed original of this written statement has been provided to SpartanNash Company and will be retained by SpartanNash Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 97

#### POLICIES AND PROCEDURES

Policy Name:	SpartanNash Company Clawback Policy
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<b>Document Owner:</b>	<b>Ileana McAlary,</b> EVP Chief Legal Officer & Secretary	<b>Effective:</b>	August 23, 2023	<b>Updated:</b>	August 23, 2023
<b>Responsible Executive:</b>	<b>Ileana McAlary,</b> EVP Chief Legal Officer & Secretary	<b>Editors:</b>	<b>Ileana McAlary,</b> EVP Chief Legal Officer & Secretary		
<b>CONFIDENTIAL:</b> This document is the property of SpartanNash and may not be copied or disclosed to others without authorization from the document owner or responsible executive. Additionally, this policy may not be amended or modified without the approval of the SpartanNash Chief Legal Officer.					

**Coverage**

This policy will apply to any Incentive Compensation received by any Covered Associate of SpartanNash Company (the "Company") on or after October 2, 2023, or which by its terms is made subject to this policy.

For purposes of this policy, a "Covered Event" means the occurrence of the following events: (1) a restatement of all or a portion of the Company's financial statements due to material noncompliance with any financial reporting requirement under applicable securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (a "Material Restatement Event"), (2) Incentive Compensation was awarded to, or received by, a Covered Associate based on financial statements and/or performance metrics determined to be materially inaccurate (regardless of whether the Covered Associate was responsible for the inaccuracy) (an "Inaccurate Metrics Event") or (3) as to any specific Covered Associate, ethical misconduct, serious wrongdoing, or violation of applicable legal or regulatory requirements by the Covered Associate in the course of the Covered Associates' employment ("Misconduct") that causes substantial harm to the Company (a "Misconduct Event"). For the avoidance of doubt, Inaccurate Metrics Events shall include, but not be limited to, any Material Restatement Event.

Exhibit 97

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### **Exercise of Clawback Authority**

#### **Material Restatement Event**

In the event of a Material Restatement Event, the Board of Directors of the Company (the “Board”) shall, as promptly as reasonably possible, require the forfeiture and/or recoupment of the amount of Incentive Compensation received (as determined pursuant to the following paragraph) by a Covered Executive during the applicable Recovery Period. Forfeiture and/or recoupment of such Incentive Compensation from a Covered Executive in the event of a Material Restatement Event shall be required regardless of whether the Covered Executive or any other person was at fault or responsible for accounting errors that contributed to the need for the financial restatement or engaged in any misconduct.

Subject to the Board’s authority in the event of a Misconduct Event (as described below), if a Material Restatement Event occurs, the amount of Incentive Compensation subject to forfeiture and/or recoupment will be limited to (i) the Incentive Compensation received by the Covered Executive during the applicable Recovery Period based on the erroneous data and calculated without regard to any taxes paid or withheld, minus (ii) the Incentive Compensation that would have been received by the Covered Executive had it been calculated based on the restated financial statements or if such financial statements or performance metrics had been accurate, as applicable. With respect to Incentive Compensation based on stock price or TSR, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in the financial restatement, then the Committee shall determine the amount to be recovered based on a reasonable estimate of the effect of the financial restatement on the stock price or TSR upon which the Incentive Compensation was received and the Company shall document the determination of that reasonable estimate and provide it to the Nasdaq Stock Market (“Nasdaq”). In the case of a Material Restatement Event, Incentive Compensation is considered to have been received by a Covered Executive in the fiscal year during which the applicable financial reporting measure was attained or purportedly attained, regardless of when the payment or grant of such Incentive Compensation occurs.

Notwithstanding the foregoing, in the event of a Material Restatement Event, the compensation required to be recouped under this policy shall not include Incentive Compensation received by such Covered Executive (i) prior to beginning service as a Covered Executive or (ii) if he or she did not serve as a Covered Executive at any time during the performance period applicable to the Incentive Compensation in question. In addition, the Committee (or a majority of independent directors serving on the Board) may determine not to seek recovery from a Covered Executive in whole or part to the extent it determines in its sole discretion that such recovery would be impracticable because (A) the direct expense paid to a third party to assist in enforcing recovery would exceed the recoverable amount (after having made a reasonable attempt to recover the erroneously awarded Incentive Compensation and providing corresponding documentation of such attempt to Nasdaq), (B) recovery would violate the home country law that was adopted prior to November 28, 2022, as determined by an opinion of counsel licensed in the applicable jurisdiction that is acceptable to and provided to Nasdaq, or (C) recovery would likely cause the Company’s 401(k) plan or any other tax-qualified retirement plan to fail to meet the requirements of Section 401(a)(13) or Section 411(a) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

The Company shall not indemnify any Covered Executive or pay or reimburse the premium for any insurance policy to cover any losses incurred by such Covered Executive in the event of a Material Restatement Event under this policy.

#### Inaccurate Metrics Event

In the event of an Inaccurate Metrics Event, the Board may require the forfeiture and/or recoupment of any Incentive Compensation that is based on erroneous data and is either (1) outstanding and unpaid, whether vested or unvested, or (2) was received by a Covered Associate during the applicable Recovery Period.

Subject to the Board's authority in the event of a Misconduct Event (as described below), if an Inaccurate Metrics Event occurs, the amount of Incentive Compensation subject to forfeiture and/or recoupment will be limited to (i) the Incentive Compensation received by the Covered Associate during the applicable Recovery Period based on the erroneous data and adjusted for any taxes paid or withheld, minus (ii) the Incentive Compensation that would have been received by the Covered Associate had it been calculated based on the restated financial statements or if such financial statements or performance metrics had been accurate, as applicable. The Committee (or a majority of independent directors serving on the Board) may determine not to seek recovery from a Covered Associate in whole or part to the extent it determines in its sole discretion that such recovery would be impracticable.

#### Misconduct Event

In the event of a Misconduct Event, the Board may require the forfeiture and/or recoupment of any Incentive Compensation that is either (1) outstanding and unpaid, whether vested or unvested, or (2) was received by a Covered Associate during the applicable Recovery Period. The Board, in its sole discretion, shall determine the amount of Incentive Compensation to be forfeited and/or recouped, which may include the full amount of the applicable award or awards.

#### Administration

The Committee will administer and interpret this policy, except that any exercise of clawback authority shall be approved by the Board. All determinations and interpretations made by the Committee and/or the Board will be final, binding and conclusive.

The existence and date of a Covered Event and the amount of any forfeiture and/or recoupment will be determined by the Board in its sole discretion; provided that, notwithstanding the foregoing, this policy shall be interpreted and administered consistent with the requirements of Section 10D of the Securities Exchange Act of 1934, as amended, any regulations and interpretations promulgated thereunder, and the rules and listing standards of Nasdaq, as may be amended from time to time.

The Company may use any legal or equitable remedies that are available to the Company to recoup any erroneously awarded Incentive Compensation, including but not limited to by collecting from the Covered Associate a cash payment or shares of Company common stock or by forfeiting any amounts that the Company owes to the Covered Associate. Any forfeiture and/or recoupment under this policy will be in addition to any other remedies that may be available under applicable law or Company policy, including termination of employment. Nothing in this policy will be deemed to limit or restrict the Company from providing for forfeiture and/or recoupment of compensation (including Incentive Compensation) under circumstances not set forth in this policy.

#### Limitations

The authority set forth in this policy shall be limited to the extent that it would violate any applicable law or regulation or, unless otherwise required by applicable law or regulation, (1) result in substantial adverse tax or accounting consequences for the Company, (2) prejudice the Company's interests in any related proceeding or investigation, or (3) reasonably result in expenses that exceed the amount that would be forfeited and/or recouped in exercising such authority. In each case, the Committee will determine the extent of such limit in its sole discretion.

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Exhibit 97

#### Other

The terms of this policy shall be binding upon and enforceable against each Covered Associate and his or her heirs, executors, administrators and legal representatives. The Board, in its discretion, may modify or amend, in whole or in part, any or all of the provisions of this policy, and may suspend this policy from time to time. This policy and all rights and obligations hereunder shall be governed by and construed in accordance with the internal laws of the State of Michigan, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

#### Definitions

For purposes of this policy:

**"Committee"** means the Compensation Committee of the Board.

**"Covered Associate"** means any current or former associate holding or who held a position at the level of Vice President or a more senior position.

**"Covered Executive"** means each current or former "executive officer," within the meaning of Rule 10D-1 under the Securities Exchange Act of 1934, as amended, who was employed by the Company or a subsidiary of the Company.

**"Incentive Compensation"** means any compensation granted, earned or vested based wholly or in part upon the attainment of any financial reporting measure determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measure that is derived wholly or in part from such measures, whether or not presented within the financial statements of the Company or included in a filing with the U.S. Securities and Exchange Commission, including stock price and total shareholder return ("TSR"), including but not limited to performance-based cash, stock, options or other equity-based awards. Compensation that is granted, vests or is earned based solely upon the occurrence of non-financial events, such as base salary, restricted stock or options with time-based vesting, or a bonus awarded solely at the discretion of the Board or Compensation Committee and not based on the attainment of any financial measure, is not subject to this Policy.

**"Recovery Period"** means (A) in the case of a Material Restatement Event, the three (3) completed fiscal years immediately preceding the date on which the Company is required to prepare the financial restatement, as determined in accordance with the last sentence of this definition, or any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years (provided that a transition period between the last day of the Company's previous fiscal year and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year), (B) in the case of an Inaccurate Metrics Event or Misconduct Event that does not involve ongoing Misconduct, the three (3) year period preceding the date of such Inaccurate Metrics Event, as determined by the Compensation Committee, or (C) in the case of ongoing Misconduct, the three (3) year period preceding the earliest date of such Misconduct and continuing until the termination of such Misconduct. For purposes of subsection (A), the date on which the Company is required to prepare a financial restatement is the earlier to occur of (aa) the date the Board or a Board committee (or authorized officers of the Company if Board action is not required) concludes, or reasonably should have concluded, that the Company is required to prepare a financial restatement or (bb) the date a court, regulator, or other legally authorized body directs the Company to prepare a financial restatement.

Revision Log

Version	Date:	Editors:	Description of change:
0.0	[Date ]	[Name, Title]	Released

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*SpartanNash Company Clawback Policy, August 23, 2023* Page 6 of 6

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