

REFINITIV

# DELTA REPORT

## 10-Q

DIT - AMCON DISTRIBUTING CO

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - DECEMBER 31, 2023

The following comparison report has been automatically generated

**TOTAL DELTAS** 2198

█ CHANGES 91

█ DELETIONS 206

█ ADDITIONS 1901

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

**FORM 10-Q**

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

For the quarterly period ended **December March 31, 2023 2024**

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 **1-15589**



Graphic

(Exact name of registrant as specified in its charter)

**Delaware**

**47-0702918**

(State or other jurisdiction  
of incorporation or organization)

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

**7405 Irvington Road, Omaha NE**

**68122**

(Address of principal executive offices)

(Zip code)

**Registrant's telephone number, including area code: (402) 331-3727**

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
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Common Stock, \$0.01 Par Value	DIT	NYSE American
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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 filer  Accelerated filer  Non-accelerated filer

Smaller reporting company  Emerging growth company

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

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

The Registrant had 630,362 shares of its \$.01 par value common stock outstanding as of January 17, 2024 April 17, 2024.

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**PART I — FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**AMCON Distributing Company and Subsidiaries**  
**Condensed Consolidated Balance Sheets**  
**December March 31, 2023 2024 and September 30, 2023**

	December		September		March		September	
	2023		2023		2024		2023	
	(Unaudited)				(Unaudited)			
<b>ASSETS</b>								
Current assets:								
Cash	\$ 996,695		\$ 790,931		\$ 951,521		\$ 790,931	
Accounts receivable, less allowance for credit losses of \$2.3 million at December 2023 and \$2.4 million at September 2023		68,822,905		70,878,420				
Accounts receivable, less allowance for credit losses of \$2.3 million at March 2024 and \$2.4 million at September 2023					66,881,140		70,878,420	
Inventories, net	158,167,362		158,582,816		121,324,279		158,582,816	
Income taxes receivable	1,517,687		1,854,484		844,730		1,854,484	
Prepaid expenses and other current assets	13,926,848		13,564,056		15,244,494		13,564,056	
Total current assets	243,431,497		245,670,707		205,246,164		245,670,707	
Property and equipment, net	81,730,692		80,607,451		94,475,740		80,607,451	
Operating lease right-of-use assets, net	23,345,042		23,173,287		22,830,252		23,173,287	
Goodwill	5,778,325		5,778,325		5,778,325		5,778,325	
Other intangible assets, net	5,150,510		5,284,935		5,016,084		5,284,935	
Other assets	2,936,861		2,914,495		2,810,304		2,914,495	
Total assets	\$ 362,372,927		\$ 363,429,200		\$ 336,156,869		\$ 363,429,200	
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>								
Current liabilities:								
Accounts payable	\$ 44,059,086		\$ 43,099,326		\$ 51,726,762		\$ 43,099,326	
Accrued expenses	13,788,439		14,922,279		12,661,273		14,922,279	
Accrued wages, salaries and bonuses	5,160,357		8,886,529		5,371,550		8,886,529	
Current operating lease liabilities	6,019,749		6,063,048		6,031,117		6,063,048	
Current maturities of long-term debt	1,972,096		1,955,065		4,485,028		1,955,065	
Current mandatorily redeemable non-controlling interest	1,757,236		1,703,604		1,812,558		1,703,604	
Total current liabilities	72,756,963		76,629,851		82,088,288		76,629,851	
Credit facilities	140,073,953		140,437,989		99,194,708		140,437,989	
Deferred income tax liability, net	5,385,163		4,917,960		5,071,404		4,917,960	
Long-term operating lease liabilities	17,646,454		17,408,758		17,106,256		17,408,758	

Long-term debt, less current maturities	11,167,890	11,675,439	16,045,738	11,675,439
Mandatorily redeemable non-controlling interest, less current portion	7,933,339	7,787,227	8,012,406	7,787,227
Other long-term liabilities	523,157	402,882	686,435	402,882
Shareholders' equity:				
Preferred stock, \$.01 par value, 1,000,000 shares authorized	—	—	—	—
Common stock, \$.01 par value, 3,000,000 shares authorized, 630,362 shares outstanding at December 2023 and 608,689 shares outstanding at September 2023	9,648	9,431		
Common stock, \$.01 par value, 3,000,000 shares authorized, 630,362 shares outstanding at March 2024 and 608,689 shares outstanding at September 2023			9,648	9,431
Additional paid-in capital	32,521,091	30,585,388	33,160,639	30,585,388
Retained earnings	105,627,432	104,846,438	106,053,510	104,846,438
Treasury stock at cost	(31,272,163)	(31,272,163)	(31,272,163)	(31,272,163)
Total shareholders' equity	106,886,008	104,169,094	107,951,634	104,169,094
Total liabilities and shareholders' equity	<u>\$ 362,372,927</u>	<u>\$ 363,429,200</u>	<u>\$336,156,869</u>	<u>\$363,429,200</u>

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

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**AMCON Distributing Company and Subsidiaries**  
**Condensed Consolidated Unaudited Statements of Operations**  
for the three and six months ended **December 31, 2023** **March 31, 2024** and **2022**

	For the three months ended December	
	2023	2022
Sales (including excise taxes of \$138.1 million and \$130.3 million, respectively)	\$ 644,959,073	\$ 565,989,507
Cost of sales	601,658,151	531,019,924
Gross profit	43,300,922	34,969,583
Selling, general and administrative expenses	37,258,677	28,379,186
Depreciation and amortization	2,219,168	1,070,886
	39,477,845	29,450,072
Operating income	3,823,077	5,519,511

Other expense (income):				
Interest expense		2,311,513	1,694,158	
Change in fair value of mandatorily redeemable non-controlling interest		199,744	(54,916)	
Other (income), net		(563,141)	(53,532)	
		1,948,116	1,585,710	
Income from operations before income taxes		1,874,961	3,933,801	
Income tax expense		804,000	1,304,800	
Net income available to common shareholders		\$ 1,070,961	\$ 2,629,001	
Basic earnings per share available to common shareholders		\$ 1.80	\$ 4.52	
Diluted earnings per share available to common shareholders		\$ 1.78	\$ 4.46	
Basic weighted average shares outstanding		595,623	581,612	
Diluted weighted average shares outstanding		603,300	589,881	
Dividends paid per common share		\$ 0.18	\$ 0.18	
	For the three months ended March	For the six months ended March		
	2024	2023	2024	2023
Sales (including excise taxes of \$127.4 and \$130.9 million, and \$265.5 and \$261.3 million, respectively)	\$ 601,877,306	\$ 584,993,848	\$ 1,246,836,380	\$ 1,150,983,356
Cost of sales	559,566,439	543,861,287	1,161,224,591	1,074,881,211
Gross profit	42,310,867	41,132,561	85,611,789	76,102,145
Selling, general and administrative expenses	36,677,814	33,996,988	73,936,491	62,376,176
Depreciation and amortization	2,289,390	1,807,753	4,508,558	2,878,639
	38,967,204	35,804,741	78,445,049	65,254,815
Operating income	3,343,663	5,327,820	7,166,740	10,847,330
Other expense (income):				
Interest expense	2,247,737	2,169,541	4,559,250	3,863,698
Change in fair value of mandatorily redeemable non-controlling interest	134,389	221,030	334,133	166,114
Other (income), net	(191,006)	(173,725)	(754,147)	(227,257)
	2,191,120	2,216,846	4,139,236	3,802,555
Income from operations before income taxes	1,152,543	3,110,974	3,027,504	7,044,775
Income tax expense	613,000	1,045,400	1,417,000	2,350,200
Net income available to common shareholders	\$ 539,543	\$ 2,065,574	\$ 1,610,504	\$ 4,694,575
Basic earnings per share available to common shareholders	\$ 0.90	\$ 3.53	\$ 2.69	\$ 8.04
Diluted earnings per share available to common shareholders	\$ 0.89	\$ 3.49	\$ 2.66	\$ 7.94
Basic weighted average shares outstanding	600,161	585,885	597,879	583,725
Diluted weighted average shares outstanding	608,029	592,448	605,917	591,249

Dividends paid per common share	\$ 0.46	\$ 5.18	\$ 0.64	\$ 5.36
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**AMCON Distributing Company and Subsidiaries**  
**Condensed Consolidated Unaudited Statements of Shareholders' Equity**  
**for the three and six months ended December 31, 2023 March 31, 2024 and 2022 2023**

THREE MONTHS ENDED	Additional								
	Common Stock		Treasury Stock		Paid-in	Retained	Capital	Earnings	Total
	Shares	Amount	Shares	Amount					
<b>DECEMBER 2022</b>									
Balance, October 1, 2022	917,009	\$ 9,168	(332,220)	\$ (30,867,287)	\$ 26,903,201	\$ 96,784,353		\$ 92,829,435	
Dividends on common stock, \$5.18 per share	—	—	—	—	—	—	(3,200,650)	(3,200,650)	
Compensation expense and issuance of stock in connection with equity-based awards	26,263	263	—	—	2,453,953	—	—	2,454,216	
Net income available to common shareholders	—	—	—	—	—	2,629,001	—	2,629,001	
Balance, December 31, 2022	<u>943,272</u>	<u>\$ 9,431</u>	<u>(332,220)</u>	<u>\$ (30,867,287)</u>	<u>\$ 29,357,154</u>	<u>\$ 96,212,704</u>	—	<u>\$ 94,712,002</u>	
<b>THREE MONTHS ENDED</b>									
<b>DECEMBER 2023</b>									
Balance, October 1, 2023	943,272	\$ 9,431	(334,583)	\$ (31,272,163)	\$ 30,585,388	\$ 104,846,438		\$ 104,169,094	
Dividends on common stock, \$0.46 per share	—	—	—	—	—	—	(289,967)	(289,967)	
Compensation expense and issuance of stock in connection with equity-based awards	21,673	217	—	—	1,935,703	—	—	1,935,920	
Net income available to common shareholders	—	—	—	—	—	1,070,961	—	1,070,961	
Balance, December 31, 2023	<u>964,945</u>	<u>\$ 9,648</u>	<u>(334,583)</u>	<u>\$ (31,272,163)</u>	<u>\$ 32,521,091</u>	<u>\$ 105,627,432</u>	—	<u>\$ 106,886,008</u>	

	Additional							
	Common Stock		Treasury Stock		Paid-in	Retained	Total	
	Shares	Amount	Shares	Amount	Capital	Earnings		
<b>THREE MONTHS ENDED</b>								
<b>MARCH 2023</b>								
Balance, January 1, 2023	943,272	\$ 9,431	(332,220)	\$ (30,867,287)	\$ 29,357,154	\$ 96,212,704	\$ 94,712,002	
Dividends on common stock, \$ .18 per share	—	—	—	—	—	(111,220)	(111,220)	
Compensation expense related to equity-based awards	—	—	—	—	409,412	—	409,412	
Net income available to common shareholders	—	—	—	—	—	2,065,574	2,065,574	
Balance, March 31, 2023	<u>943,272</u>	<u>\$ 9,431</u>	<u>(332,220)</u>	<u>\$ (30,867,287)</u>	<u>\$ 29,766,566</u>	<u>\$ 98,167,058</u>	<u>\$ 97,075,768</u>	
<b>THREE MONTHS ENDED</b>								
<b>MARCH 2024</b>								
Balance, January 1, 2024	964,945	\$ 9,648	(334,583)	\$ (31,272,163)	\$ 32,521,091	\$ 105,627,432	\$ 106,886,008	
Dividends on common stock, \$ 0.18 per share	—	—	—	—	—	(113,465)	(113,465)	
Compensation expense related to equity-based awards	—	—	—	—	639,548	—	639,548	
Net income available to common shareholders	—	—	—	—	—	539,543	539,543	
Balance, March 31, 2024	<u>964,945</u>	<u>\$ 9,648</u>	<u>(334,583)</u>	<u>\$ (31,272,163)</u>	<u>\$ 33,160,639</u>	<u>\$ 106,053,510</u>	<u>\$ 107,951,634</u>	
<b>SIX MONTHS ENDED MARCH</b>								
<b>2023</b>								
Balance, October 1, 2022	917,009	\$ 9,168	(332,220)	\$ (30,867,287)	\$ 26,903,201	\$ 96,784,353	\$ 92,829,435	
Dividends on common stock, \$ 5.36 per share	—	—	—	—	—	(3,311,870)	(3,311,870)	
Compensation expense and issuance of stock in connection with equity-based awards	26,263	263	—	—	2,863,365	—	2,863,628	
Net income available to common shareholders	—	—	—	—	—	4,694,575	4,694,575	
Balance, March 31, 2023	<u>943,272</u>	<u>\$ 9,431</u>	<u>(332,220)</u>	<u>\$ (30,867,287)</u>	<u>\$ 29,766,566</u>	<u>\$ 98,167,058</u>	<u>\$ 97,075,768</u>	
<b>SIX MONTHS ENDED MARCH</b>								
<b>2024</b>								
Balance, October 1, 2023	943,272	\$ 9,431	(334,583)	\$ (31,272,163)	\$ 30,585,388	\$ 104,846,438	\$ 104,169,094	
Dividends on common stock, \$ 0.64 per share	—	—	—	—	—	(403,432)	(403,432)	

Compensation expense and issuance of stock in connection with equity-based awards	21,673	217	—	—	2,575,251	—	2,575,468
Net income available to common shareholders	—	—	—	—	—	1,610,504	1,610,504
Balance, March 31, 2024	<u>964,945</u>	<u>\$ 9,648</u>	<u>(334,583)</u>	<u>\$ (31,272,163)</u>	<u>\$ 33,160,639</u>	<u>\$ 106,053,510</u>	<u>\$ 107,951,634</u>

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

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**AMCON Distributing Company and Subsidiaries**  
**Condensed Consolidated Unaudited Statements of Cash Flows**  
**for the three six months ended December 31, 2023 March 31, 2024 and 2022 2023**

	December 2023	December 2022
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income available to common shareholders	\$ 1,070,961	\$ 2,629,001
Adjustments to reconcile net income available to common shareholders to net cash flows from (used in) operating activities:		
Depreciation	2,084,743	1,028,353
Amortization	134,425	42,533
(Gain) loss on sales of property and equipment	(53,287)	(36,000)
Equity-based compensation	571,137	390,570
Deferred income taxes	467,203	1,145,822
Provision for credit losses	(91,969)	(496,332)
Inventory allowance	30,988	141,087
Change in fair value of mandatorily redeemable non-controlling interest	199,744	(54,916)
Changes in assets and liabilities:		
Accounts receivable	2,147,484	8,381,282
Inventories	384,466	(50,699,513)
Prepaid and other current assets	(362,792)	45,110
Other assets	(22,366)	199,411
Accounts payable	1,627,403	(6,602,785)
Accrued expenses and accrued wages, salaries and bonuses	(3,649,088)	(4,794,015)

Other long-term liabilities	120,275	48,921
Income taxes payable and receivable	336,797	158,978
Net cash flows from (used in) operating activities	<u>4,996,124</u>	<u>(48,472,493)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of property and equipment	(3,947,143)	(1,455,405)
Proceeds from sales of property and equipment	124,803	36,000
Net cash flows from (used in) investing activities	<u>(3,822,340)</u>	<u>(1,419,405)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Borrowings under revolving credit facilities	603,650,771	639,488,133
Repayments under revolving credit facilities	(604,014,807)	(589,262,053)
Principal payments on long-term debt	(490,518)	(202,396)
Dividends on common stock	(113,466)	(111,220)
Net cash flows from (used in) financing activities	<u>(968,020)</u>	<u>49,912,464</u>
Net change in cash	205,764	20,566
Cash, beginning of period	790,931	431,576
Cash, end of period	<u>\$ 996,695</u>	<u>\$ 452,142</u>
Supplemental disclosure of cash flow information:		
Cash paid during the period for interest	\$ 2,235,562	\$ 1,458,843
Supplemental disclosure of non-cash information:		
Equipment acquisitions classified in accounts payable	\$ 347,891	\$ 28,183
Dividends declared, not paid	176,501	3,089,430
Issuance of common stock in connection with the vesting of equity-based awards	1,296,372	2,044,805
	<b>March</b>	<b>March</b>
	<b>2024</b>	<b>2023</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income available to common shareholders	\$ 1,610,504	\$ 4,694,575
Adjustments to reconcile net income available to common shareholders to net cash flows from (used in) operating activities:		
Depreciation	4,239,707	2,732,312
Amortization	268,851	146,327
(Gain) loss on sales of property and equipment	(105,505)	(133,159)
Equity-based compensation	1,210,685	1,061,383
Deferred income taxes	153,444	989,702
Provision for credit losses	(133,707)	(378,302)
Inventory allowance	22,413	(6,947)
Change in fair value of mandatorily redeemable non-controlling interest	334,133	166,114
Changes in assets and liabilities:		
Accounts receivable	4,130,987	5,097,281
Inventories	37,236,124	19,843,973

Prepaid and other current assets	(1,680,438)	(411,185)
Other assets	104,191	(275,796)
Accounts payable	9,475,057	10,457,273
Accrued expenses and accrued wages, salaries and bonuses	(4,402,600)	(1,094,009)
Other long-term liabilities	283,553	116,896
Income taxes payable and receivable	1,009,754	(59,527)
Net cash flows from (used in) operating activities	<u>53,757,153</u>	<u>42,946,911</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of property and equipment	(11,084,390)	(2,760,586)
Proceeds from sales of property and equipment	234,278	137,500
Acquisition of Henry's	—	(54,958,637)
Net cash flows from (used in) investing activities	<u>(10,850,112)</u>	<u>(57,581,723)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Borrowings under revolving credit facilities	1,128,853,805	1,184,888,842
Repayments under revolving credit facilities	(1,170,097,086)	(1,173,087,034)
Proceeds from borrowings on long-term debt	—	7,000,000
Principal payments on long-term debt	(1,099,738)	(504,941)
Dividends on common stock	(403,432)	(3,311,870)
Net cash flows from (used in) financing activities	<u>(42,746,451)</u>	<u>14,984,997</u>
Net change in cash	160,590	350,185
Cash, beginning of period	790,931	431,576
Cash, end of period	<u>\$ 951,521</u>	<u>\$ 781,761</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid during the period for interest, net of amounts capitalized	\$ 4,568,790	\$ 3,527,737
Cash paid during the period for income taxes, net of refunds	194,902	1,419,354
<b>Supplemental disclosure of non-cash information:</b>		
Equipment acquisitions classified in accounts payable	\$ 167,913	\$ 132,876
Purchase of property financed with debt	8,000,000	—
Issuance of common stock in connection with the vesting of equity-based awards	1,296,372	2,044,805

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

**AMCON Distributing Company and Subsidiaries**  
**Notes to Condensed Consolidated Unaudited Financial Statements**

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND BASIS OF PRESENTATION**

AMCON Distributing Company and Subsidiaries ("AMCON" or the "Company") ~~operate~~ serves ~~customers in 32 states~~ through two business segments:

- Our wholesale distribution segment ("Wholesale Segment") distributes consumer products and provides a full range of programs and services to our customers that are focused on helping them manage their business and increase their profitability. We serve customers ~~in 31 states and primarily operate~~ in the Central, Rocky Mountain, Mid-South and Mid-Atlantic regions of the United States.
- Our retail health food segment ("Retail Segment") operates ~~15~~ 14 health food retail stores located throughout the Midwest and Florida.

**WHOLESALE SEGMENT**

Our Wholesale Segment is one of the largest wholesale distributors in the United States, serving approximately 7,000 retail outlets including convenience stores, grocery stores, liquor stores, drug stores, and tobacco shops. We currently distribute over 20,000 different consumer products, including cigarettes and tobacco products, candy and other confectionery products, beverages, groceries, paper products, health and beauty care products, frozen and refrigerated products and institutional foodservice products. Convenience stores represent our largest customer category. In December 2023, Convenience Store News ranked us as the sixth (6th) largest convenience store distributor in the United States based on annual sales.

Our Wholesale Segment offers retailers the ability to take advantage of manufacturer- and Company-sponsored sales and marketing programs, merchandising and product category management services, and the use of information systems and data services that are focused on minimizing retailers' investment in inventory, while seeking to maximize their sales and profits. In addition, our wholesale distribution capabilities provide valuable services to both manufacturers of consumer products and convenience retailers. Manufacturers benefit from our broad retail coverage, inventory management, efficiency in processing small orders, and frequency of deliveries. Convenience retailers benefit from our distribution capabilities by gaining access to a broad product line, inventory optimization and merchandising expertise, information systems, and accessing trade credit.

Our Wholesale Segment operates ~~nine~~ 12 distribution centers located in ~~Colorado, Illinois, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Tennessee and West Virginia~~. These distribution centers, combined with cross-dock facilities, include approximately ~~1.3 million~~ 1.7 million square feet of permanent floor space. Our principal suppliers include Altria, RJ Reynolds, ITG Brands, Hershey, ~~Kellogg's, Kellanova, Kraft Heinz, and Mars Wrigley~~. We also market private label lines of water, candy products, batteries, and other products. We do not maintain any long-term purchase contracts with our suppliers.

During Q2 2024, the Company purchased a distribution facility in Colorado City, Colorado for \$10.0 million, funded with \$2.0 million in cash and an \$8.0 million note payable. In addition, as further described in Note 10, subsequent to Q2 2024 the Company closed on its previously announced acquisition of Burklund Distributors, Inc.

## **RETAIL SEGMENT**

Our Retail Segment, through our *Healthy Edge Retail Group* subsidiary, is a specialty retailer of natural/organic groceries and dietary supplements which focuses on providing high quality products at affordable prices, with an exceptional level of customer service and nutritional consultation. All of the products carried in our stores must meet strict quality and ingredient guidelines, and include offerings such as gluten-free and antibiotic-free groceries and meat products, as well as products containing no artificial colors, flavors, preservatives, or partially hydrogenated oils. We design our retail sites in an efficient and flexible small-store format, which emphasizes a high energy and shopper-friendly environment.

We operate within the natural products retail industry, which is a subset of the United States grocery industry. This industry includes conventional, natural, gourmet and specialty food markets, mass and discount retailers, warehouse clubs, health

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food stores, dietary supplement retailers, drug stores, farmers markets, mail order and online retailers, and multi-level marketers.

Our Retail Segment operates **15** **14** retail health food stores as Chamberlin's Natural Foods, Akin's Natural Foods, and Earth Origins Market. These stores carry over 36,000 different national and regionally branded and private label products

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including high-quality natural, organic, and specialty foods consisting of produce, baked goods, frozen foods, nutritional supplements, personal care items, and general merchandise.

## **FINANCIAL STATEMENTS**

The Company's fiscal year ends on September 30<sup>th</sup>, except for one non-wholly owned subsidiary whose fiscal year ends on the last Friday of September. The results for the interim period included with this Quarterly Report may not be indicative of the results which could be expected for the entire fiscal year. All significant intercompany transactions and balances have been eliminated in consolidation. Certain information and footnote disclosures normally included in our annual financial statements prepared in accordance with generally accepted accounting principles ("GAAP") have been condensed or omitted. In the opinion of management, the accompanying condensed consolidated unaudited financial statements ("financial statements") contain all adjustments necessary to fairly present the financial information included herein. The

Company believes that although the disclosures contained herein are adequate to prevent the information presented from being misleading, these financial statements should be read in conjunction with the Company's annual audited consolidated financial statements for the fiscal year ended September 30, 2023, as filed with the Securities and Exchange Commission on Form 10-K. For purposes of this report, unless the context indicates otherwise, all references to "we", "us", "our", the "Company", and "AMCON" shall mean AMCON Distributing Company and its consolidated subsidiaries. Additionally, the three-month fiscal periods ended December 31, 2023 March 31, 2024 and December 31, 2022 March 31, 2023 have been referred to throughout this Quarterly Report as Q1 Q2 2024 and Q1 Q2 2023, respectively. The fiscal balance sheet dates as of December 31, 2023 March 31, 2024 and September 30, 2023 have been referred to as December 2023 March 2024 and September 2023, respectively.

#### **ACCOUNTING PRONOUNCEMENTS**

##### **Accounting Pronouncement Adopted**

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments", which introduces a forward-looking approach, based on expected losses, to estimate credit losses on certain types of financial instruments, including trade receivables. The estimate of expected credit losses requires entities to incorporate considerations of historical information, current information, and reasonable and supportable forecasts. This ASU also expands the disclosure requirements to enable users of financial statements to understand the entity's assumptions, models, and methods for estimating expected credit losses. The Company adopted ASU 2016-13 on October 1, 2023. The adoption of ASU 2016-13 did not have a material effect on the Company's consolidated financial statements.

##### **Accounts Receivable:**

In accordance with the Company's accounts receivable policy, accounts receivable primarily consists of customer trade receivables arising in the ordinary course of business. These receivables are recorded net of an allowance for expected credit losses. The Company evaluates the expected uncollectibility of accounts receivable based on a combination of factors, including but not limited to, past collection history, customer credit terms, industry, regulatory and economic conditions, and any customer specific risks, including credit concentration risks. The Company determines the past due status of trade receivables based on our payment terms with each customer. If the Company becomes aware of a specific customer's inability to meet its financial obligations, such as bankruptcy filings or deterioration in the customer's operating results or financial position, the Company may record a specific reserve for expected credit losses to reduce the related receivable to the amount it reasonably believes is collectible. Account balances are charged off against the allowance for credit losses when collection efforts have been exhausted and the account receivable is deemed worthless. Any subsequent recoveries of charged off account balances are recorded as income in the period received.

In December November 2023, the FASB issued ASU No. 2023-07, "Segment Reporting (Topic 280) – Improvements to Reportable Segment Disclosures", which improves reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. This ASU also expands disclosure requirements to enable users of financial statements to better understand the entity's measurement and assessment of segment performance and resource allocation. This guidance is effective for fiscal years beginning after December 15, 2023 (fiscal 2025 for the Company).

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and interim periods within fiscal years beginning after December 15, 2024 (fiscal 2026 for the Company), with early adoption permitted.

In December 2023, the FASB issued ASU No. 2023-09, "Income Taxes (Topic 740) – Improvements to Income Tax Disclosures", which enhances the transparency, effectiveness and comparability of income tax disclosures by requiring consistent categories and greater disaggregation of information related to income tax rate reconciliations and the jurisdictions in which income taxes are paid. This guidance is effective for annual periods beginning after December 15, 2024 (fiscal 2026 for the Company), with early adoption permitted.

## 2. INVENTORIES

Inventories in our Wholesale Segment consisted of finished goods and are stated at the lower of cost or net realizable value, utilizing FIFO and average cost methods. Inventories in our Retail Segment consisted of finished goods and are stated at the lower of cost or market using the retail method. The wholesale distribution and retail health food segment inventories consist of finished products purchased in bulk quantities to be redistributed to the Company's customers or sold at retail. Finished goods included total reserves of approximately \$1.2 million at both December 2023 March 2024 and September 2023. These reserves include the Company's obsolescence allowance, which reflects estimated unsalable or non-refundable inventory based upon an evaluation of slow-moving and discontinued products.

## 3. GOODWILL AND OTHER INTANGIBLE ASSETS

Goodwill at December 2023 March 2024 and September 2023 was as follows:

	December	September	March	September
	2023	2023	2024	2023
Wholesale Segment	\$ 5,778,325	\$ 5,778,325	\$ 5,778,325	\$ 5,778,325

Other intangible assets at December 2023 March 2024 and September 2023 consisted of the following:

	December 2023	September 2023	March 2024	September 2023
Customer lists (Wholesale Segment) (less accumulated amortization of \$0.3 million at December 2023 and \$0.2 million at September 2023)	\$ 3,168,947	\$ 3,226,480		
Non-competition agreements (Wholesale Segment) (less accumulated amortization of \$0.1 million at both December 2023 and September 2023)	176,253	199,503		
Tradename (Wholesale Segment) (less accumulated amortization of \$0.2 million at December 2023 and \$0.1 million at September 2023)	1,305,310	1,358,952		
Customer lists (Wholesale Segment) (less accumulated amortization of \$0.3 million at March 2024 and \$0.2 million at September 2023)			\$3,111,413	\$3,226,480
Non-competition agreements (Wholesale Segment) (less accumulated amortization of \$0.2 million at March 2024 and \$0.1 million at September 2023)			153,004	199,503
Tradename (Wholesale Segment) (less accumulated amortization of \$0.3 million at March 2024 and \$0.1 million at September 2023)			1,251,667	1,358,952
Trademarks and tradenames (Retail Segment)	500,000	500,000	500,000	500,000
	\$ 5,150,510	\$ 5,284,935	\$5,016,084	\$5,284,935

Goodwill and Retail Segment trademarks and tradenames are considered to have indefinite useful lives and therefore no amortization has been taken on these assets. Goodwill recorded on the Company's consolidated balance sheets represent amounts allocated to its wholesale reporting unit which totaled approximately \$5.8 million at both December 2023 March 2024 and September 2023. The Company performs its annual impairment testing during the fourth fiscal quarter of each year or as circumstances change or necessitate. There have been no material changes to the Company's impairment assessments since its fiscal year ended September 2023.

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At December 2023, March 2024, identifiable intangible assets considered to have finite lives were represented by customer lists which are being amortized over 15 years, a non-competition agreement which is being amortized over three years, a non-competition agreement which is being amortized over five years, and a tradename in our Wholesale Segment that is being amortized over seven years. These intangible assets are evaluated for accelerated attrition or amortization

adjustments if warranted. Amortization expense related to these assets was approximately \$0.1 million and \$0.3 million for the three-month period three- and six-month periods ended December 2023 March 2024, respectively, and less than approximately \$0.1 million for both the three-month period three- and six-month periods ended December 2022 March 2023.

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Estimated future amortization expense related to identifiable intangible assets with finite lives was as follows at December 2023: March 2024:

	December 2023	March 2024
Fiscal 2024 (1)	\$ 403,276	\$ 268,851
Fiscal 2025	506,869	506,869
Fiscal 2026	463,703	463,703
Fiscal 2027	463,703	463,703
Fiscal 2028	451,043	451,043
Fiscal 2029 and thereafter	2,361,916	2,361,915
	\$ 4,650,510	\$ 4,516,084

(1) Represents amortization for the remaining nine six months of Fiscal 2024.

#### 4. DIVIDENDS

The Company paid cash dividends on its common stock totaling \$0.1 million in each of \$0.3 million and \$0.4 million for the three-month three- and six-month periods ended December March 2024, respectively, and \$3.2 million and \$3.3 million for the three- and six-month periods ended March 2023, and December 2022. During Q1 2024, the Company declared a \$0.28 per share special dividend totaling approximately \$0.2 million that was included in accrued expenses on the condensed consolidated balance sheet at December 2023 and was paid in Q2 2024. During Q1 2023, the Company declared a \$5.00 per share special dividend totaling approximately \$3.1 million that was paid in Q2 2023, respectively.

#### 5. EARNINGS PER SHARE

Basic earnings per share available to common shareholders is calculated by dividing net income available to common shareholders by the weighted average number of common shares outstanding for each period. Diluted earnings per share available to common shareholders is calculated by dividing net income available to common shareholders by the sum of the weighted average number of common shares outstanding and the weighted average dilutive equity awards.

	For the three months ended December			
	2023		2022	
	Basic	Diluted	Basic	Diluted
Weighted average number of common shares outstanding	595,623	595,623	581,612	581,612
Weighted average net additional shares outstanding assuming dilutive options exercised and proceeds used to purchase treasury stock (1)	—	7,677	—	8,269
Weighted average number of shares outstanding	595,623	603,300	581,612	589,881
Net income available to common shareholders	\$ 1,070,961	\$ 1,070,961	\$ 2,629,001	\$ 2,629,001
Net earnings per share available to common shareholders	\$ 1.80	\$ 1.78	\$ 4.52	\$ 4.46

	For the three months ended March			
	2024		2023	
	Basic	Diluted	Basic	Diluted
Weighted average number of common shares outstanding	600,161	600,161	585,885	585,885
Weighted average net additional shares outstanding assuming dilutive options exercised and proceeds used to purchase treasury stock (1)	—	7,868	—	6,563
Weighted average number of shares outstanding	600,161	608,029	585,885	592,448
Net income available to common shareholders	\$ 539,543	\$ 539,543	\$ 2,065,574	\$ 2,065,574
Net earnings per share available to common shareholders	\$ 0.90	\$ 0.89	\$ 3.53	\$ 3.49

(1) Diluted earnings per share calculation includes all equity-based awards deemed to be dilutive.

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	For the six months ended March			
	2024		2023	
	Basic	Diluted	Basic	Diluted
Weighted average number of common shares outstanding	597,879	597,879	583,725	583,725
Weighted average net additional shares outstanding assuming dilutive options exercised and proceeds used to purchase treasury stock (1)	—	8,038	—	7,524

Weighted average number of shares outstanding	597,879	605,917	583,725	591,249
Net income available to common shareholders	\$ 1,610,504	\$ 1,610,504	\$ 4,694,575	\$ 4,694,575
Net earnings per share available to common shareholders	\$ 2.69	\$ 2.66	\$ 8.04	\$ 7.94

(1) Diluted earnings per share calculation includes all equity-based awards deemed to be dilutive.

## 6. DEBT

The Company primarily finances its operations through three credit facility agreements (a) a facility that is an obligation of AMCON Distributing Company (the "AMCON Facility"), (b) a facility that is an obligation of Team Sledd, (the LLC ("Team Sledd" and, the "Team Sledd Facility") and (c) a facility that is an obligation of Henry's (the Foods, Inc. ("Henry's" and, the "Henry's Facility") (collectively, the "Facilities") and long-term debt agreements with banks. The Team Sledd Facility and the Henry's Facility are non-recourse to AMCON Distributing Company, are not guaranteed by AMCON Distributing Company and have no cross default provisions applicable to AMCON Distributing Company.

At December 2023, March 2024, the Facilities had a total combined borrowing capacity of \$300.0 million, which includes provisions for up to \$30.0 million in credit advances for certain inventory purchases, which are limited by accounts receivable and inventory qualifications, and the value of certain real estate collateral. The Henry's Facility matures in February 2026, the AMCON Facility matures in June 2027 and the Team Sledd Facility matures in March 2028, each without a penalty for

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prepayment. Obligations under the Facilities are collateralized by substantially all of the Company's respective equipment, intangibles, inventories, accounts receivable, and certain real estate. The Facilities each feature an unused commitment fee and springing financial covenants. Borrowings under the Facilities bear interest at either the bank's prime rate or the Secured Overnight Financing Rate ("SOFR"), plus any applicable spreads.

The amount available for use from the Facilities at any given time is subject to a number of factors, including eligible accounts receivable and inventory balances that fluctuate day-to-day, as well as the value of certain real estate collateral. Based on the collateral and loan limits as defined in the Facility agreements, the credit limit of the combined Facilities at December 2023 March 2024 was \$228.6 million \$191.2 million, of which \$140.1 million \$99.2 million was outstanding, leaving \$88.5 million \$92.0 million available.

The average interest rate of the Facilities was 7.17% 6.97% at December 2023, March 2024. For the three six months ended December 2023, March 2024, the peak borrowings under the Facilities was \$156.8 million, and the average

borrowings and average availability under the Facilities was \$125.2 million \$120.1 million and \$86.8 million \$83.5 million, respectively.

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**LONG-TERM DEBT**

In addition to the Facilities, the Company also had the following long-term debt obligations at March 2024 and September 2023.

	March 2024	September 2023
Note payable, interest payable at a fixed rate of 4.10% with monthly installments of principal and interest of \$53,361 through June 2033 with remaining principal due July 2033, collateralized by Team Sledd's principal office and warehouse	4,958,774	5,174,188
Note payable, interest payable at a fixed rate of 3.25% with monthly installments of principal and interest of \$17,016 through August 2034 with remaining principal due September 2034, collateralized by Team Sledd's principal office and warehouse	1,819,711	1,891,638
Note payable with monthly installments of principal and interest of \$7,934 through February 2025 with remaining principal due March 2025, and an effective variable rate of 7.40% at March 2024, collateralized by certain of Team Sledd's equipment	240,630	288,237
Note payable, interest payable at a fixed rate of 6.04% with monthly installments of principal and interest of \$131,987 through February 2028, collateralized by certain of Henry's equipment	5,511,651	6,276,441
Unsecured note payable, interest payable at a fixed rate of 5.50% with quarterly installments of principal and interest of \$727,741 through February 2027	8,000,000	—
	20,530,766	13,630,504
Less current maturities	(4,485,028)	(1,955,065)
	<u>\$ 16,045,738</u>	<u>\$ 11,675,439</u>

The aggregate minimum principal maturities of the long-term debt for each of the next five fiscal years are as follows:

<u>Fiscal Year Ending</u>	
2024 (1)	\$ 2,553,909
2025	4,667,440
2026	4,773,843
2027	3,574,419
2028	1,329,208
2029 and thereafter	3,631,947

	<u>\$ 20,530,766</u>
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(1) Represents payments for the remaining six months of Fiscal 2024.

#### **Cross Default and Co-Terminus Provisions**

Team Sledd's three notes payable and the Team Sledd Facility contain cross default provisions. The Henry's note payable and the Henry's Facility contain cross default provisions. There were no such cross defaults for either Team Sledd or Henry's at **December 2023**. **March 2024**. Additionally, the Team Sledd Facility and the Henry's Facility are non-recourse to AMCON Distributing Company, are not guaranteed by AMCON Distributing Company and have no cross default provisions applicable to AMCON Distributing Company. The Company and its subsidiaries, including Team Sledd and Henry's, were in compliance with all of the financial covenants under the respective Facilities at **December 2023**. **March 2024**.

#### **Other**

The Company has issued a letter of credit for **\$1.1 million** **\$1.5 million** to its workers' compensation insurance **carrier** **carriers** as part of its self-insured loss control program.

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#### **7. INCOME TAXES**

The change in the Company's effective income tax rate for the **three-month period** **three- and six-month periods** ended **December 2023** **March 2024** as compared to the respective prior year **period** **periods** was primarily related to non-deductible compensation expense in relation to the amount of income from operations before income tax expense and higher effective state income tax rates between the comparative periods.

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#### **8. MANDATORILY REDEEMABLE NON-CONTROLLING INTEREST**

Mandatorily redeemable non-controlling interest ("MRNCI") recorded on the Company's condensed consolidated balance sheets represents the fair value of the non-controlling interest in the Company's strategic investment in Team Sledd. The Company owned approximately 64% of Team Sledd as of both December 2023 March 2024 and September 2023. The Company has elected to present the MRNCI liability at fair value under ASC 825 – *Financial Instruments* as it believes this best represents the potential future liability and cash flows. As such, the MRNCI balance at December 2023 March 2024 represents the fair value of the remaining future membership interest redemptions and other amounts due to noncontrolling interest holders through April 2026. The Company calculates the estimated fair value of the MRNCI based on a discounted cash flow valuation technique using the best information available at the reporting date, and records changes in the fair value of the MRNCI as a component of other expense (income) in the Condensed Consolidated Statements of Operations. The Company estimates the probability and timing of future redemptions and earnings of Team Sledd based on management's knowledge and assumptions of certain events as of each reporting date, including the timing of any future redemptions and an appropriate discount rate. At December 2023, March 2024, the difference between the contractual amount due under the MRNCI and the fair value was approximately \$0.8 million. The MRNCI is classified as Level 3 because of the Company's reliance on unobservable assumptions. The following table presents changes in the fair value of the MRNCI since September 2023:

Fair value of MRNCI as of September 2023	\$ 9,490,831
Redemption of non-controlling interests	—
Distributions to non-controlling interest	—
Change in fair value	199,744
Fair value of MRNCI as of December 2023	\$ 9,690,575
Less current portion at fair value	(1,757,236)
	<u>\$ 7,933,339</u>

## 9. EQUITY-BASED INCENTIVE AWARDS

The Company has three equity-based incentive plans, the 2014 Omnibus Incentive Plan, the 2018 Omnibus Incentive Plan, and the 2022 Omnibus Incentive Plan (collectively "the Omnibus Plans"), which provide for equity incentives to employees. Each Omnibus Plan was designed with the intent of encouraging employees to acquire a vested interest in the growth and performance of the Company. The Omnibus Plans together permit the issuance of up to 195,000 shares of the Company's common stock in the form of stock options, restricted stock awards, restricted stock units, performance share awards as well as awards such as stock appreciation rights, performance units, performance shares, bonus shares, and dividend share awards payable in the form of common stock or cash. The number of shares issuable under the Omnibus Plans is subject to customary adjustments in the event of stock splits, stock dividends, and certain other distributions on the Company's common stock. At December 2023, awards with respect to a total of 140,837 shares, net of forfeitures, had been awarded pursuant to the Omnibus Plans and awards with respect to another 54,163 shares may be awarded under the Omnibus Plans.

### Restricted Stock Units

Fair value of MRNCI as of September 2023	\$ 9,490,831
Redemption of non-controlling interests	—
Distributions to non-controlling interest	—
Change in fair value	334,133
Fair value of MRNCI as of March 2024	\$ 9,824,964

Less current portion at fair value	(1,812,558)
	<u>\$ 8,012,406</u>

During October 2023, the remaining 6,834 restricted stock units vested, and there April 2024, subsequent to Q2 2024, certain membership interests in Team Sledd were no unvested restricted stock units remaining as redeemed, which resulted in AMCON's ownership of December 2023. Team Sledd's outstanding equity increasing to approximately 75%.

The following summarizes restricted stock unit activity under the Omnibus Plans during Q1 2024:

	Number of Shares	Weighted Average Fair Value
Nonvested restricted stock units at September 2023	6,834	\$206.00
Granted	—	—
Vested	(6,834)	195.99
Expired	—	—
Nonvested restricted stock units at December 2023	<u>—</u>	<u>\$</u> <u>—</u>

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**Restricted Stock Awards**

At December 2023, the Compensation Committee of the Board of Directors had authorized and approved the following restricted stock awards to members of the Company's management team pursuant to the provisions of the Company's Omnibus Plans:

	Restricted Stock Awards (1)	Restricted Stock Awards (2)	Restricted Stock Awards (3)
Date of award:	October 2021	October 2022	October 2023
Original number of awards issued:	15,100	15,100	15,100
Service period:	36 months	36 months	36 months
Estimated fair value of award at grant date:	\$ 2,089,000	\$ 2,824,000	2,762,000
Non-vested awards outstanding at December 2023:	5,034	10,067	15,100
Fair value of non-vested awards at December 2023 of approximately:	\$ 982,000	\$ 1,963,000	2,945,000

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- (1) 10,066 of the restricted stock awards were vested as of December 2023. The remaining 5,034 restricted stock awards will vest in October 2024.
- (2) 5,033 of the restricted stock awards were vested as of December 2023. 5,033 restricted stock awards will vest in October 2024 and 5,034 will vest in October 2025.
- (3) The 15,100 restricted stock awards will vest in equal amounts in October 2024, October 2025 and October 2026.

There is no direct cost to the recipients of the restricted stock awards, except for any applicable taxes. The restricted stock awards provide that the recipients receive common stock in the Company, subject to certain restrictions until such time as the awards vest. The recipients of the restricted stock awards are entitled to the customary adjustments in the event of stock splits, stock dividends, and certain other distributions on the Company's common stock. All cash dividends and/or distributions payable to restricted stock recipients will be held in escrow until all the conditions of vesting have been met. The compensation expense recorded in the Company's Statement of Operations reflects the straight-line amortized fair value.

The following summarizes restricted stock award activity under the Omnibus Plans during Q1 2024:

	Number of Shares	Weighted Average Fair Value
Nonvested restricted stock awards at September 2023	25,167	\$ 206.00
Granted	15,100	182.89
Vested	(10,066)	189.87
Expired	—	—
Nonvested restricted stock awards at December 2023	<u>30,201</u>	<u>\$ 195.00</u>

Income from operations before income taxes included compensation expense related to the amortization of the Company's restricted stock awards of approximately \$0.6 million and \$0.4 million during Q1 2024 and Q1 2023, respectively. Total unamortized compensation expense related to these awards at December 2023 and September 2023 was approximately \$4.7 million and \$2.6 million, respectively.

#### **10.9. BUSINESS SEGMENTS**

The Company has two reportable business segments: the wholesale distribution of consumer products which includes Team Sledd and Henry's (the Wholesale Segment), and the retail sale of health and natural food products (the Retail Segment). The aggregation of the Company's business operations into these business segments was based on a range of considerations, including but not limited to the characteristics of each business, similarities in the nature and type of products sold, customer classes, methods used to sell the products and economic profiles. Included in the "Other" column

are intercompany eliminations and assets held and charges incurred and income earned by our holding company. The segments are evaluated on revenues, gross margins, operating income (loss), and income (loss) from operations before taxes. Certain amounts in prior periods have been reclassified to conform with the current presentation.

	Wholesale Segment	Retail Segment	Other	Consolidated	Wholesale Segment	Retail Segment	Other	Consolidated
<b>THREE MONTHS ENDED DECEMBER 2023</b>								
<b>THREE MONTHS ENDED MARCH 2024</b>								
External revenue:								
Cigarettes	\$395,668,708	\$ —	\$ —	\$395,668,708	\$367,878,538	\$ —	\$ —	\$367,878,538
Tobacco	121,351,701	—	—	121,351,701	114,832,151	—	—	114,832,151
Confectionery	40,043,130	—	—	40,043,130	37,862,439	—	—	37,862,439
Health food	—	10,689,429	—	10,689,429	—	11,224,329	—	11,224,329
Foodservice & other	77,206,105	—	—	77,206,105	70,079,849	—	—	70,079,849
Total external revenue	634,269,644	10,689,429	—	644,959,073	590,652,977	11,224,329	—	601,877,303
Depreciation	1,855,746	228,997	—	2,084,743	1,940,843	214,121	—	2,154,968
Amortization	134,425	—	—	134,425	134,426	—	—	134,426
Operating income (loss)	6,970,125	(16,476)	(3,130,572)	3,823,077	5,813,354	456,722	(2,926,413)	3,343,669
Interest expense	—	—	2,311,513	2,311,513	—	—	2,247,737	2,247,737
Income (loss) from operations before taxes	6,775,098	541,948	(5,442,085)	1,874,961	5,843,163	483,530	(5,174,150)	1,152,581
Total assets	345,011,110	16,574,317	787,500	362,372,927	318,821,274	16,312,547	1,023,048	336,156,825
Capital expenditures (1)	2,980,331	299,169	—	3,279,500	14,230,776	726,494	—	14,957,270

	Wholesale Segment	Retail Segment	Other	Consolidated
<b>THREE MONTHS ENDED DECEMBER 2022</b>				
External revenue:				
Cigarettes	\$ 367,689,677	\$ —	\$ —	\$ 367,689,677
Tobacco	104,039,120	—	—	104,039,120
Confectionery	32,558,996	—	—	32,558,996
Health food	—	10,261,873	—	10,261,873
Foodservice & other	51,439,841	—	—	51,439,841
Total external revenue	555,727,634	10,261,873	—	565,989,507

Depreciation	750,130	278,223	—	1,028,353
Amortization	42,533	—	—	42,533
Operating income (loss)	8,240,495	(266,616)	(2,454,368)	5,519,511
Interest expense	—	—	1,694,158	1,694,158
Income (loss) from operations before taxes	8,324,827	(242,500)	(4,148,526)	3,933,801
Total assets	313,505,013	16,681,645	687,291	330,873,949
Capital expenditures	1,248,067	143,865	—	1,391,932

(1) Includes \$10.0 million purchase of a distribution facility in Colorado City, Colorado.

	Wholesale	Retail		Consolidated	
	Segment	Segment	Other		
<b>THREE MONTHS ENDED MARCH 2023</b>					
External revenue:					
Cigarettes	\$ 364,231,958	\$ —	\$ —	\$ 364,231,958	
Tobacco	110,422,414	—	—	110,422,414	
Confectionery	36,637,059	—	—	36,637,059	
Health food	—	11,348,011	—	11,348,011	
Foodservice & other	62,354,406	—	—	62,354,406	
Total external revenue	573,645,837	11,348,011	—	584,993,848	
Depreciation	1,443,546	260,413	—	1,703,959	
Amortization	103,794	—	—	103,794	
Operating income (loss)	8,921,673	171,448	(3,765,301)	5,327,820	
Interest expense	—	—	2,169,541	2,169,541	
Income (loss) from operations before taxes	8,847,836	197,980	(5,934,842)	3,110,974	
Total assets	302,197,109	17,105,773	1,151,868	320,454,750	
Capital expenditures	1,167,966	241,909	—	1,409,875	

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	Wholesale	Retail		Consolidated	
	Segment	Segment	Other		
<b>SIX MONTHS ENDED MARCH 2024</b>					
External revenue:					
Cigarettes	\$ 763,547,247	\$ —	\$ —	\$ 763,547,247	
Tobacco	236,183,852	—	—	236,183,852	
Confectionery	77,905,569	—	—	77,905,569	
Health food	—	21,913,758	—	21,913,758	

Foodservice & other	147,285,954	—	—	147,285,954
Total external revenue	1,224,922,622	21,913,758	—	1,246,836,380
Depreciation	3,796,589	443,118	—	4,239,707
Amortization	268,851	—	—	268,851
Operating income (loss)	12,783,479	440,246	(6,056,985)	7,166,740
Interest expense	—	—	4,559,250	4,559,250
Income (loss) from operations before taxes	12,618,261	1,025,478	(10,616,235)	3,027,504
Total assets	318,821,274	16,312,547	1,023,048	336,156,869
Capital expenditures (1)	17,211,107	1,025,663	—	18,236,770

(1) Includes \$10.0 million purchase of a distribution facility in Colorado City, Colorado.

	Wholesale	Retail		Consolidated
	Segment	Segment	Other	
<b>SIX MONTHS ENDED MARCH 2023</b>				
External revenue:				
Cigarettes	\$ 731,921,636	\$ —	\$ —	\$ 731,921,636
Tobacco	214,461,534	—	—	214,461,534
Confectionery	69,196,055	—	—	69,196,055
Health food	—	21,609,884	—	21,609,884
Foodservice & other	113,794,247	—	—	113,794,247
Total external revenue	1,129,373,472	21,609,884	—	1,150,983,356
Depreciation	2,193,676	538,636	—	2,732,312
Amortization	146,327	—	—	146,327
Operating income (loss)	17,162,168	(95,168)	(6,219,670)	10,847,330
Interest expense	—	—	3,863,698	3,863,698
Income (loss) from operations before taxes	17,172,664	(44,521)	(10,083,368)	7,044,775
Total assets	302,197,109	17,105,773	1,151,868	320,454,750
Capital expenditures	2,416,033	385,774	—	2,801,807

## 10. SUBSEQUENT EVENT

On April 5, 2024, the Company closed on its previously announced acquisition of Burklund Distributors, Inc. ("Burklund"), purchasing substantially all of Burklund's net operating assets for approximately \$19.6 million comprised of \$15.7 million in cash and \$3.9 million in term debt in the form of a promissory note payable. Costs to effectuate the transaction were not significant and were expensed as incurred. The acquisition of Burklund aligns with the Company's long-term growth strategy by expanding its regional footprint and will provide customers with an enhanced range of products and services over time. As of the issuance date of these unaudited condensed consolidated financial statements, certain disclosures required by ASC 805 were impracticable to provide based on the transaction closing date. The Company expects to substantially complete its preliminary accounting for the acquisition during Q3 FY24.

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[Table of Contents](#)**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations****BUSINESS UPDATE**

Our business continues to be impacted by macroeconomic factors, supply chain disruptions, and an extended period of high inflation. These factors have decreased consumer discretionary spending and related retail level demand and have also resulted in sustained cost pressures across our entire business **in the form of higher product, including equipment, labor, interest, product, and other operating costs.**

We **are continue to closely monitor** monitor regulatory actions and proposals from **federal and state** governmental and **other** regulatory bodies, including the United States Food and Drug Administration ("FDA"), which is evaluating the possible prohibition and/or limitations on the sale of certain cigarette, e-cigarette, tobacco, and vaping products, including menthol cigarettes. If such **further regulations or further** product sale limitations were to be implemented, they may limit the range of products we are able to sell in related product categories and decrease overall consumer demand. Any such changes may negatively impact our revenues, gross margins, and financial results.

The Company continues to **integrate** make targeted investments in conjunction with its long-term growth strategy. In this regard, during Q2 2024, the **operations of Henry's Foods, Inc. ("Henry's")** Company purchased a 250,000 square foot distribution facility in Colorado City, Colorado, which **has expanded** we are actively building out to operational status. This facility will play a central role in the Company's long-term geographic expansion initiatives. In addition, work continues on the completion of the Company's new 175,000 square foot distribution facility located in Springfield, Missouri. This new facility will enhance our foodservice capabilities in that region.

Finally, as previously disclosed, in early April 2024 the Company closed on its acquisition of Burklund Distributors, Inc. ("Burklund") headquartered in East Peoria, Illinois, purchasing substantially all of Burklund's net operating assets. The acquisition will expand the Company's regional footprint and **provided access to** provide customers with an **industry-leading foodservice distribution platform.** The Company also continues to evaluate other growth **enhanced range of products and geographic expansion opportunities.** services over time.

**FORWARD-LOOKING STATEMENTS**

This Quarterly Report on Form 10-Q, including the Management's Discussion and Analysis of Financial Condition and Results of Operations and other sections, contains forward-looking statements that are subject to risks and uncertainties and reflect management's current beliefs and estimates of future economic circumstances, industry conditions, Company performance and financial results. Forward-looking statements include information concerning the possible or assumed future results of operations of the Company and those statements preceded by, followed by or that include the words "future," "position," "anticipate(s)," "expect(s)," "believe(s)," "see," "plan," "further improve," "outlook," "should" or similar expressions. For these statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Forward-looking statements are not guarantees of future performance or results. They involve risks, uncertainties and assumptions.

It should be understood that the following important factors, in addition to those discussed elsewhere in this document, could affect the future results of the Company and could cause those results to differ materially from those expressed in our forward-looking statements:

- risks associated with unrest in certain global regions which could further disrupt world supply chains, manufacturing centers, and shipping routes, impacting commodity/product availability and/or cost, as well as consumer demand trends,
- risks associated with higher interest rates or prolonged periods of higher interest rates and the related impact on demand, customer credit risk, profitability and cash flows for both the Company and its customer base, particularly as it relates to variable interest rate borrowings, as well as the risk that such borrowings may not be renewed in the future on favorable terms or at all,
- risks associated with any systemic pressures in the banking system, particularly as they relate to customer credit risk and any resulting impact on our cash flow and our ability to collect on our receivables,

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- risks associated with an inflationary operating environment, particularly as it relates to wages, fuel, interest, commodity prices, and customer credit risk, which impact our operating cost structure and could impact food ingredient costs and demand for many of the products we sell,
- regulations, potential bans, limitations and/or litigation related to the manufacturing, distribution, and sale of certain cigarette, e-cigarette, tobacco, and vaping products imposed by the FDA, state or local governmental agencies, or other parties, including proposed and pending regulations and/or product approvals/authorizations related to the manufacturing, distribution, and sale of certain menthol, vaping, and flavored tobacco products,

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- risks associated with the threat or occurrence of epidemics or pandemics (such as COVID-19 or its variants) or other public health issues, including the continued health of our employees and management, the reduced demand for our goods and services or increased credit risk from customer credit defaults resulting from an economic downturn,

- risks associated with the imposition of governmental orders restricting our operations and the operations of our suppliers and customers, in particular, disruptions to our supply chain or our ability to procure products or fulfill orders due to labor shortages in our warehouse operations,
- risks associated with the Company's business model which experienced both higher sales volumes and labor costs during the COVID-19 pandemic, and the risk of sales returning to pre-pandemic levels without the Company being able to offset increases in its cost structure,
- risks associated with the acquisition of assets, new businesses or equity investments by either of our business segments including, but not limited to, risks associated with consummating such transactions on expected terms or timing, purchase price and business valuation and recording risks, and risks related to the assumption of certain liabilities or obligations,
- risks associated with the integration of new businesses or equity investments by either of our business segments including, but not limited to, risks associated with vendor and customer retention, technology integration, and the potential loss of any key management personnel or employees,
- increasing competition and market conditions in our wholesale and retail health food businesses and any associated impact on the carrying value and any potential impairment of assets (including intangible assets) within those businesses,
- risk that our repositioning strategy for our retail business will not be successful,
- risks associated with opening new retail stores,
- risks to our brick and mortar retail business and potentially to our wholesale distribution business if online shopping formats such as Amazon™ continue to grow in popularity and further disrupt traditional sales channels, it may present a significant direct risk to our brick and mortar retail business and potentially to our wholesale distribution business,
- the potential impact that ongoing, decreasing, or changing trade tariff and trade policies may have on our product costs or on consumer disposable income and demand,
- increasing product and operational costs resulting from ongoing supply chain disruptions, an intensely competitive labor market with a limited pool of qualified workers, and higher incremental costs associated with the handling and transportation of certain product categories such as foodservice,
- increases in state and federal excise taxes on cigarette and tobacco products and the potential impact on demand, particularly as it relates to current legislation under consideration which could significantly increase such taxes,
- risks associated with disruptions to our technology systems or those of third parties upon which we rely, including security breaches, cyber and ransomware attacks, malware, or other methods by which such information systems could or may have been compromised or impacted,
- increases in inventory carrying costs and customer credit risks,

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- changes in pricing strategies and/or promotional/incentive programs offered by cigarette and tobacco manufacturers,
- changing demand for the Company's products, particularly cigarette, tobacco and vaping products,
- risks that product manufacturers may begin selling directly to convenience stores and bypass wholesale distributors,
- changes in laws and regulations and ongoing compliance related to health care and associated insurance,

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- increasing health care costs for both the Company and consumers and its potential impact on discretionary consumer spending,
- decreased availability of capital resources,
- domestic regulatory and legislative risks,
- poor weather conditions, and the adverse effects of climate change,
- consolidation trends within the convenience store, wholesale distribution, and retail health food industries,
- risks associated with labor disputes (strikes), natural disasters, domestic/political unrest and incidents of violence, or any restrictions, regulations, or security measures implemented by governmental bodies in response to these items, and
- other risks over which the Company has little or no control, and any other factors not identified herein.

Changes in these factors could result in significantly different results. Consequently, future results may differ from management's expectations. Moreover, past financial performance should not be considered a reliable indicator of future performance. Any forward-looking statement contained herein is made as of the date of this document. Except as required by law, the Company undertakes no obligation to publicly update or correct any of these forward-looking statements in the

future to reflect changed assumptions, the occurrence of material events or changes in future operating results, financial conditions or business over time.

#### **CRITICAL ACCOUNTING ESTIMATES**

Certain accounting estimates used in the preparation of the Company's condensed consolidated unaudited financial statements ("financial statements") require us to make judgments and estimates and the financial results we report may vary depending on how we make these judgments and estimates. Our critical accounting estimates are set forth in our annual report on Form 10-K for the fiscal year ended September 30, 2023, as filed with the Securities and Exchange Commission. Other than the adoption of ASU 2016-13 as described in Note 1 of Part I, Item 1 of this quarterly report on Form 10-Q, there have been no significant changes with respect to these estimates and related policies during the **three** **six** months ended **December 2023**, **March 2024**.

#### **FIRST **SECOND** FISCAL QUARTER 2024 (Q1) (Q2 2024)**

The following discussion and analysis includes the Company's results of operations for the three **and six** months ended **December 2023**, **March 2024** and **December 2022**, **March 2023**:

#### **Wholesale Segment**

Our Wholesale Segment is one of the largest wholesale distributors in the United States, serving approximately 7,000 retail outlets including convenience stores, grocery stores, liquor stores, drug stores, and tobacco shops. We currently distribute over 20,000 different consumer products, including cigarettes and tobacco products, candy and other confectionery products, beverages, groceries, paper products, health and beauty care products, frozen and refrigerated products and institutional foodservice products. Convenience stores represent our largest customer category. In December 2023, Convenience Store News ranked us as the sixth **(6th)** **(6th)** largest convenience store distributor in the United States based on annual sales.

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Our Wholesale Segment offers retailers the ability to take advantage of manufacturer- and Company-sponsored sales and marketing programs, merchandising and product category management services, and the use of information systems and data services that are focused on minimizing retailers' investment in inventory, while seeking to maximize their sales and profits. In addition, our wholesale distribution capabilities provide valuable services to both manufacturers of consumer products and convenience retailers. Manufacturers benefit from our broad retail coverage, inventory management, efficiency in processing small orders, and frequency of deliveries. Convenience retailers benefit from our distribution capabilities by gaining access to a broad product line, inventory optimization and merchandising expertise, information systems, and accessing trade credit.

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Our Wholesale Segment operates **nine****12** distribution centers located in Colorado, Illinois, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Tennessee and West Virginia. These distribution centers, combined with cross-dock facilities, include approximately **1.3 million****1.7 million** square feet of permanent floor space. Our principal suppliers include Altria, RJ Reynolds, ITG Brands, Hershey, **Kellogg's**, **Kellanova**, Kraft Heinz, and Mars Wrigley. We also market private label lines of water, candy products, batteries, and other products. We do not maintain any long-term purchase contracts with our suppliers.

#### Retail Segment

Our Retail Segment, through our *Healthy Edge Retail Group* subsidiary, is a specialty retailer of natural/organic groceries and dietary supplements which focuses on providing high quality products at affordable prices, with an exceptional level of customer service and nutritional consultation. All of the products carried in our stores must meet strict quality and ingredient guidelines, and include offerings such as gluten-free and antibiotic-free grocery and meat products, as well as products containing no artificial colors, flavors, preservatives, or partially hydrogenated oils. We design our retail sites in an efficient and flexible small-store format, which emphasizes a high energy and shopper-friendly environment.

We operate within the natural products retail industry, which is a subset of the United States grocery industry. This industry includes conventional, natural, gourmet and specialty food markets, mass and discount retailers, warehouse clubs, health food stores, dietary supplement retailers, drug stores, farmers markets, mail order and online retailers, and multi-level marketers.

Our Retail Segment operates **15****14** retail health food stores as Chamberlin's Natural Foods, Akin's Natural Foods, and Earth Origins Market. These stores carry over 36,000 different national and regionally branded and private label products including high-quality natural, organic, and specialty foods consisting of produce, baked goods, frozen foods, nutritional supplements, personal care items, and general merchandise.

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#### **RESULTS OF OPERATIONS – THREE MONTHS ENDED DECEMBER: MARCH:**

	2023	2022	Incr (Decr)	% Change	2024	2023	Incr (Decr)	% Chan
<b>CONSOLIDATED:</b>								
Sales (1)	\$644,959,073	\$565,989,507	\$78,969,566	14.0	\$601,877,306	\$584,993,848	\$16,883,458	2.
Cost of sales	601,658,151	531,019,924	70,638,227	13.3	559,566,439	543,861,287	15,705,152	2.
Gross profit	43,300,922	34,969,583	8,331,339	23.8	42,310,867	41,132,561	1,178,306	2.
Gross profit percentage	6.7 %	6.2 %			7.0 %	7.0 %		
Operating expense	\$ 39,477,845	\$ 29,450,072	\$10,027,773	34.1	\$ 38,967,204	\$ 35,804,741	\$ 3,162,463	8.
Operating income	3,823,077	5,519,511	(1,696,434)	(30.7)	3,343,663	5,327,820	(1,984,157)	(37.
Interest expense	2,311,513	1,694,158	617,355	36.4	2,247,737	2,169,541	78,196	3.
Change in fair value of mandatorily redeemable non-controlling interest	199,744	(54,916)	254,660	(463.7)	134,389	221,030	(86,641)	(39.
Income tax expense	804,000	1,304,800	(500,800)	(38.4)	613,000	1,045,400	(432,400)	(41.
Net income available to common shareholders	1,070,961	2,629,001	(1,558,040)	(59.3)	539,543	2,065,574	(1,526,031)	(73.
<b>BUSINESS SEGMENTS:</b>								
<b>Wholesale</b>								
Sales	\$634,269,644	\$555,727,634	\$78,542,010	14.1	\$590,652,977	\$573,645,837	\$17,007,140	3.
Gross profit	39,353,558	31,275,260	8,078,298	25.8	38,155,508	37,096,448	1,059,060	2.
Gross profit percentage	6.2 %	5.6 %			6.5 %	6.5 %		
<b>Retail</b>								
Sales	\$ 10,689,429	\$ 10,261,873	\$ 427,556	4.2	\$ 11,224,329	\$ 11,348,011	\$ (123,682)	(1.
Gross profit	3,947,364	3,694,323	253,041	6.8	4,155,359	4,036,113	119,246	3.
Gross profit percentage	36.9 %	36.0 %			37.0 %	35.6 %		

(1) Sales are reported net of costs associated with incentives provided to retailers. These incentives totaled \$9.5 million \$11.3 million in Q1 Q2 2024 and \$8.9 million \$10.3 million in Q1 Q2 2023.

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## SALES

Changes in sales are primarily driven by:

- (i) changes to selling prices, which are largely controlled by our product suppliers, and excise taxes imposed on cigarettes and tobacco products by various states;
- (ii) changes in the volume and mix of products sold to our customers, either due to a change in purchasing patterns resulting from shifting consumer preferences or the fluctuation in the comparable number of business days in our reporting period; and
- (iii) acquisitions.

### SALES – Q1 Q2 2024 vs. Q1 Q2 2023

Sales in our Wholesale Segment increased \$78.5 million \$17.0 million during Q1 Q2 2024 as compared to Q1 Q2 2023. Significant items impacting sales during Q1 Q2 2024 included a \$78.7 million \$24.4 million increase in sales related to the acquisition of Henry's Foods, Inc. ("Henry's") during Q2 2023 and a \$26.3 million \$26.2 million increase in sales related to price increases implemented by cigarette manufacturers, partially offset by a \$33.0 million decrease in sales related to the volume and mix of cigarette cartons sold, and a \$5.0 million increase \$0.6 million decrease in sales related to the volume and mix of products in our tobacco, confectionery, foodservice, and other categories ("Other Products"), partially offset by a \$31.5 million decrease in sales related to the volume and mix of cigarette cartons sold. Sales in our Retail Segment increased \$0.4 million decreased \$0.1 million during Q1 Q2 2024 as compared to Q1 Q2 2023. This increase decrease was due to approximately \$1.6 million related to the closure of five stores between the comparative periods, partially offset by a \$0.8 million increase related to higher sales volumes in our existing stores and a \$0.7 million increase related to the re-opening of our Port Charlotte store that was damaged during Hurricane Ian and approximately \$0.8 million related to higher sales volumes in our existing stores, partially offset by a \$1.2 million decrease related to the closure of four stores between the comparative periods. Ian.

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### GROSS PROFIT – Q1 Q2 2024 vs. Q1 Q2 2023

Our gross profit does not include fulfillment costs and costs related to the distribution network, which are included in selling, general and administrative costs, and may not be comparable to those of other entities. Some entities may classify such costs as a component of cost of sales. Cost of sales, a component used in determining gross profit, for the wholesale and retail segments includes the cost of products purchased from manufacturers, less incentives we receive which are netted against such costs.

Gross profit in our Wholesale Segment increased \$8.1 million \$1.1 million during Q1 Q2 2024 as compared to Q1 Q2 2023. Significant items impacting gross profit during Q1 Q2 2024 included a \$9.0 million \$2.9 million increase in gross profit

related to the acquisition of Henry's in Q2 2023, partially offset by a \$0.1 million increase \$0.8 million decrease in gross profit due to the timing and related benefits of cigarette manufacturer price increases, partially offset by a \$0.2 million \$0.5 million decrease in gross profit related to the volume and mix of cigarette cartons sold between the comparative periods and a \$0.8 million \$0.5 million decrease in gross profit related to the mix of volumes and promotions in our Other Products category. Gross profit in our Retail Segment increased \$0.3 million approximately \$0.1 million during Q1 Q2 2024 as compared to Q1 Q2 2023. This change was primarily related to a \$0.4 million increase in realized margins in our existing stores and a \$0.3 million increase related to the re-opening of our Port Charlotte store that was damaged during Hurricane Ian, and a \$0.4 million increase in realized margins in our existing stores, partially offset by a \$0.4 million \$0.6 million decrease related to the closure of four five stores between the comparative periods.

#### OPERATING EXPENSE – Q1 Q2 2024 vs. Q1 Q2 2023

Operating expense includes selling, general and administrative expenses and depreciation, depreciation and amortization. Selling, general, and administrative expenses primarily consist of costs related to our sales, warehouse, delivery and administrative departments, including purchasing and receiving costs, warehousing costs and costs of picking and loading customer orders. Our most significant expenses relate to costs associated with employees, facility and equipment leases, transportation, fuel, and insurance. Our Q1 Q2 2024 operating expenses increased \$10.0 million \$3.2 million as compared to Q1 Q2 2023. Significant items impacting operating expenses during Q1 Q2 2024 included a \$7.8 million \$2.7 million increase in operating expenses related to the acquisition of Henry's during Q2 2023 and a \$1.5 million \$0.9 million increase related to employee compensation and benefit costs, partially offset by a \$0.4 million increase in customer expected credit loss expense, a \$0.3 million increase in insurance costs and a \$0.3 million increase \$0.2 million decrease in other Wholesale Segment operating expenses, costs, and a \$0.2 million decrease in operating expense costs in our Retail Segment. The decrease in our Retail Segment was primarily due to a \$0.7 million decrease related to the closure of five stores between the comparative periods, partially offset by an increase of \$0.3 million in our existing stores and a \$0.3 million decrease in fuel costs. \$0.2 million increase related to the re-opening of our Port Charlotte store that was damaged during Hurricane Ian.

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#### INTEREST EXPENSE – Q1 Q2 2024 vs. Q1 Q2 2023

Interest expense increased \$0.6 million \$0.1 million in Q1 Q2 2024 as compared to Q1 Q2 2023, primarily related to higher interest rates, increased capital expenditures, and higher outstanding debt balances in the current period related to the acquisition of Henry's in Q2 2023.

#### INCOME TAX EXPENSE – Q2 2024 vs. Q2 2023

The change in the Q2 2024 income tax rate as compared to Q2 2023 was primarily related to non-deductible compensation expense in relation to the amount of income from operations before income tax expense and higher effective state income tax rates between the comparative periods.

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**RESULTS OF OPERATIONS – SIX MONTHS ENDED MARCH:**

	2024	2023	Incr (Decr)	% Change
<b>CONSOLIDATED:</b>				
Sales (1)	\$ 1,246,836,380	\$ 1,150,983,356	\$ 95,853,024	8.3
Cost of sales	1,161,224,591	1,074,881,211	86,343,380	8.0
Gross profit	85,611,789	76,102,145	9,509,644	12.5
Gross profit percentage	6.9 %	6.6 %		
Operating expense	\$ 78,445,049	\$ 65,254,815	\$ 13,190,234	20.2
Operating income	7,166,740	10,847,330	(3,680,590)	(33.9)
Interest expense	4,559,250	3,863,698	695,552	18.0
Change in fair value of mandatorily redeemable non-controlling interest	334,133	166,114	168,019	101.1
Income tax expense	1,417,000	2,350,200	(933,200)	(39.7)
Net income available to common shareholders	1,610,504	4,694,575	(3,084,071)	(65.7)
<b>BUSINESS SEGMENTS:</b>				
Wholesale				
Sales	\$ 1,224,922,622	\$ 1,129,373,472	\$ 95,549,150	8.5
Gross profit	77,509,067	68,371,710	9,137,357	13.4
Gross profit percentage	6.3 %	6.1 %		
Retail				
Sales	\$ 21,913,758	\$ 21,609,884	\$ 303,874	1.4
Gross profit	8,102,722	7,730,435	372,287	4.8
Gross profit percentage	37.0 %	35.8 %		

(1) Sales are reported net of costs associated with incentives provided to retailers. These incentives totaled \$20.8 million for the six months ended March 2024 and \$19.3 million for the six months ended March 2023.

**SALES – Six months ended March 2024**

Sales in our Wholesale Segment increased \$95.5 million during the six months ended March 2024 as compared to the same prior year period. Significant items impacting sales during the period included a \$103.1 million increase in sales

related to the acquisition of Henry's during Q2 2023, a \$52.5 million increase in sales related to price increases implemented by cigarette manufacturers, and a \$4.4 million increase in sales related to the volume and mix of products in our Other Products category, partially offset by a \$64.5 million decrease in sales related to the volume and mix of cigarette cartons sold. Sales in our Retail Segment increased \$0.3 million during the six months ended March 2024 as compared to the same prior year period. This increase was due to approximately \$1.6 million related to higher sales volumes in our existing stores and approximately \$1.5 million related to the re-opening of our Port Charlotte store that was damaged during Hurricane Ian, partially offset by a \$2.8 million decrease related to the closure of five stores between the comparative periods.

#### **GROSS PROFIT – Six months ended March 2024**

Gross profit in our Wholesale Segment increased \$9.1 million for the six months ended March 2024 as compared to the same prior year period. Significant items impacting gross profit during the period included a \$11.9 million increase in gross profit related to the acquisition of Henry's in Q2 2023, partially offset by a \$1.3 million decrease in gross profit related to the mix of volumes and promotions in our Other Products category, a \$0.8 million decrease in gross profit related to the volume and mix of cigarette cartons sold between the comparative periods, and a \$0.7 million decrease in gross profit due to the timing and related benefits of cigarette manufacturer price increases. Gross profit in our Retail Segment increased approximately \$0.4 million for the six months ended March 2024 as compared to the same prior year period. This change was primarily related to a \$0.8 million increase in realized margins in our existing stores and a \$0.6 million increase related to the re-opening of our Port Charlotte store that was damaged during Hurricane Ian, partially offset by a \$1.0 million decrease related to the closure of five stores between the comparative periods.

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#### **OPERATING EXPENSE – Six months ended March 2024**

Operating expenses increased \$13.2 million during the six months ended March 2024 as compared to the same prior year period. Significant items impacting operating expenses during the period included a \$10.6 million increase in operating expenses related to the acquisition of Henry's during Q2 2023, a \$2.4 million increase related to employee compensation and benefit costs, and a \$0.6 million increase in insurance costs, partially offset by a \$0.2 million decrease in other Wholesale Segment operating expenses, and a \$0.2 million decrease in operating expense costs in our Retail Segment. The decrease in our Retail Segment was primarily due to a \$1.2 million decrease related to the closure of five stores between the comparative periods, partially offset by an increase of \$0.7 million in our existing stores and a \$0.3 million increase related to the re-opening of our Port Charlotte store that was damaged during Hurricane Ian.

#### **INTEREST EXPENSE – Six months ended March 2024**

Interest expense increased \$0.7 million for the six months ended March 2024 as compared to the same prior year period, primarily related to higher interest rates, increased capital expenditures, and higher outstanding debt balances in the current period related to the acquisition of Henry's in Q2 2023.

#### **OTHER INCOME – Q1 Six months ended March 2024 vs. Q1 2023**

The change in other income between the comparative periods was primarily related to an insurance recovery in the current year period.

#### **INCOME TAX EXPENSE – Q1 Six months ended March 2024 vs. Q1 2023**

The change in the Q1 2024 income Company's effective tax rate during the six-month period ended March 2024 as compared to Q1 2023 the respective prior year period was primarily related to non-deductible compensation expense in relation to the amount of income from operations before income tax expense and higher effective state income tax rates between the comparative periods.

### **LIQUIDITY AND CAPITAL RESOURCES**

#### **Overview**

The Company's variability in cash flows from operating activities is dependent on the timing of inventory purchases and seasonal fluctuations. For example, periodically we have inventory "buy-in" opportunities which offer more favorable pricing terms. As a result, we may have to hold inventory for a period longer than the payment terms. This generates a cash outflow from operating activities that we expect to reverse in later periods. Additionally, during our peak time of operations in the warm weather months, we generally carry higher amounts of inventory to ensure high fill rates and customer satisfaction.

The Company primarily finances its operations through three credit facility agreements (a) a facility that is an obligation of AMCON Distributing Company (the "AMCON Facility"), (b) a facility that is an obligation of Team Sledd, (the LLC ("Team Sledd" and, the "Team Sledd Facility") and (c) a facility that is the obligation of Henry's (the "Henry's Facility") (collectively, the "Facilities") and long-term debt agreements with banks. The Team Sledd Facility and the Henry's Facility are non-recourse to AMCON Distributing Company, are not guaranteed by AMCON Distributing Company and have no cross default provisions applicable to AMCON Distributing Company.

At December 2023, March 2024, the Facilities had a total combined borrowing capacity of \$300.0 million, which includes provisions for up to \$30.0 million in credit advances for certain inventory purchases, which are limited by accounts receivable and inventory qualifications, and the value of certain real estate collateral. The Henry's Facility matures in February 2026, the AMCON Facility matures in June 2027, and the Team Sledd Facility matures in March 2028, each without a penalty for prepayment. Obligations under the Facilities are collateralized by substantially all of the Company's respective equipment, intangibles, inventories, accounts receivable, and certain real estate. The Facilities each feature an unused commitment fee

and springing financial covenants. Borrowings under the Facilities bear interest at either the bank's prime rate or the Secured Overnight Financing Rate ("SOFR"), plus any applicable spreads.

The amount available for use from the Facilities at any given time is subject to a number of factors, including eligible accounts receivable and inventory balances that fluctuate day-to-day, as well as the value of certain real estate collateral. Based on the collateral and loan limits as defined in the Facility agreements, the credit limit of the combined Facilities at December 2023 March 2024 was \$228.6 million \$191.2 million, of which \$140.1 million \$99.2 million was outstanding, leaving \$88.5 million \$92.0 million available.

The average interest rate of the Facilities was 7.17% 6.97% at December 2023 March 2024. For the three six months ended December 2023 March 2024, the peak borrowings under the Facilities was \$156.8 million, and the average borrowings and average availability under the Facilities was \$125.2 million \$120.1 million and \$86.8 million \$83.5 million, respectively.

#### **Cross Default and Co-Terminus Provisions**

Team Sledd's three notes payable and the Team Sledd Facility contain cross default provisions. The Henry's note payable and the Henry's Facility contain cross default provisions. There were no such cross defaults for either Team Sledd or

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Henry's at December 2023 March 2024. Additionally, the Team Sledd Facility and the Henry's Facility are non-recourse to AMCON Distributing Company, are not guaranteed by AMCON Distributing Company and have no cross default provisions applicable to AMCON Distributing Company. The Company and its subsidiaries, including Team Sledd and Henry's, were in compliance with all of the financial covenants under the Facilities at December 2023 March 2024.

#### **Dividend Payments**

The Company paid cash dividends on its common stock totaling \$0.1 million in each of \$0.3 million and \$0.4 million for the three-month three- and six-month periods ended December March 2024, respectively, and \$3.2 million and \$3.3 million for the three- and six-month periods ended March 2023, and December 2022. During Q1 2024, the Company declared a \$0.28 per share special dividend totaling approximately \$0.2 million that was paid in Q2 2024. During Q1 2023, the Company declared a \$5.00 per share special dividend totaling approximately \$3.1 million that was paid in Q2 2023, respectively.

#### **Other**

The Company has issued a letter of credit for \$1.1 \$1.5 million to its workers' compensation insurance carrier carriers as part of its self-insured loss control program.

#### **Off-Balance Sheet Arrangements**

The Company does not have any off-balance sheet arrangements.

#### **Liquidity Risk**

The Company's liquidity position is significantly influenced by its ability to maintain sufficient levels of working capital. For our Company and our industry in general, customer credit risk and ongoing access to bank credit heavily influence liquidity positions.

The Company does not currently hedge its exposure to interest rate risk or fuel costs. Accordingly, significant price movements in these areas can and do impact the Company's profitability.

While the Company believes its liquidity position going forward will be adequate to sustain operations in both the short- and long-term, a precipitous change in operating environment could materially impact the Company's future revenue streams as well as its ability to collect on customer accounts receivable or secure bank credit.

#### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

Not applicable.

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#### **Item 4. Controls and Procedures**

##### **Evaluation of Disclosure Controls and Procedures**

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in company reports filed or submitted under the Securities Exchange Act of 1934 (the "Exchange Act") is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's ("SEC") rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in company reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

As required by Rules 13a-15(b) and 15d-15(b) under the Exchange Act, an evaluation of the effectiveness of our disclosure controls and procedures as of **December 31, 2023** **March 31, 2024** was made under the supervision and with the participation of our senior management, including our principal executive officer and principal financial officer. Based upon that evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

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### Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, do not expect that our disclosure controls and procedures will prevent all errors and fraud. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable, not absolute, assurance of achieving the desired control objectives. Further, the design of a control system must reflect the fact that there are resource constraints, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management's override of the control.

The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

### Changes in Internal Control Over Financial Reporting

Other than the ongoing implementation of internal controls over financial reporting related to the acquisition of Henry's, there There were no changes in our internal control over financial reporting that occurred during the fiscal quarter ended December 2023, March 2024, that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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## **PART II — OTHER INFORMATION**

### **Item 1. Legal Proceedings**

None.

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

There have been no material changes to the Company's risk factors as previously disclosed in Item 1A "Risk Factors" of the Company's annual report on Form 10-K for the fiscal year ended September 30, 2023.

## **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

The Company issued unregistered securities to certain members of the Company's management team during the quarterly period ended December 31, 2023, in relation to the vesting and granting of equity awards as described in Note 9 of Part I, Item 1 of this quarterly report on Form 10-Q. These issuances were exempt from registration under Section 4(a)(2) of the Securities Act of 1933. Not applicable.

## **Item 3. Defaults Upon Senior Securities**

Not applicable.

## **Item 4. Mine Safety Disclosures**

Not applicable.

## **Item 5. Other Information**

During the three months ended December 31, 2023 March 31, 2024, none of the Company's directors or officers adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement", as each term is defined in Item 408(a) of Regulation S-K.

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## **Item 6. Exhibits**

### **(a) Exhibits**

[3.2.3.1 Amended and Restated Bylaws](#) [Certificate of Incorporation of AMCON Distributing Company dated November 6, 2023 January 25, 2024 \(incorporated by reference to Exhibit 3.2.3.1 of AMCON's Annual Current Report on Form 10-K8-K filed on November 8, 2023 January 25, 2024\)](#)

10.1 [Consent, Joinder and Ninth Amendment to Second Amended and Restated Loan and Security Agreement, dated February 9, 2024, between AMCON Distributing Company Executive Change in Control Severance Plan dated November 6, 2023 \(incorporated by reference to Exhibit 10.29 and Bank of AMCON's Annual Report on Form 10-K filed on November 8, 2023\) America](#)

10.2 [Form of Indemnification Asset Purchase Agreement, dated November 6, 2023 \(incorporated by reference to Exhibit 10.30 of AMCON's Annual Report on Form 10-K filed on November 8, 2023\) March 11, 2024, between AMCON Distributing Company and Burklund Distributors, Inc.](#)

31.1 [Certification by Christopher H. Atayan, Chief Executive Officer and Chairman, pursuant to section 302 of the Sarbanes-Oxley Act](#)

31.2 [Certification by Charles J. Schmaderer, Vice President, Chief Financial Officer and Secretary, pursuant to section 302 of the Sarbanes-Oxley Act](#)

32.1 [Certification by Christopher H. Atayan, Chief Executive Officer and Chairman, furnished pursuant to section 906 of the Sarbanes-Oxley Act](#)

32.2 [Certification by Charles J. Schmaderer, Vice President, Chief Financial Officer and Secretary, furnished pursuant to section 906 of the Sarbanes-Oxley Act](#)

101 Interactive Data File (filed herewith electronically)

104 Cover Page Interactive Data File – formatted in Inline XBRL and included as Exhibit 101

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**SIGNATURES**

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

AMCON DISTRIBUTING COMPANY  
(registrant)

Date: January 18, 2024 April 18, 2024

/s/ Christopher H. Atayan

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Christopher H. Atayan,  
Chief Executive Officer and Chairman

Date: **January 18, 2024** April 18, 2024

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/s/ Charles J. Schmaderer

Charles J. Schmaderer,  
Vice President, Chief Financial Officer and Secretary  
(Principal Financial and Accounting Officer)

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**Exhibit 10.1**

**CONSENT, JOINDER AND NINTH AMENDMENT TO  
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

THIS CONSENT, JOINDER AND NINTH AMENDMENT TO SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "Amendment") is dated as of February 9, 2024 among each of AMCON Distributing Company, a Delaware corporation, having its principal place of business at 7405 Irvington Road, Omaha, Nebraska 68122 ("AMCON"), Chamberlin Natural Foods, Inc., a Florida corporation, having its principal place of business at 3711 Oleander Way, Suite 1309, Casselberry, Florida 32707 ("Chamberlin Natural"), Health Food Associates, Inc., an Oklahoma corporation, having its principal place of business at 7807 East 51st Street, Tulsa, Oklahoma 74145 ("Health Food"), AMCON ACQUISITION CORP., a Delaware corporation, having its principal place of business at 7405 Irvington Road, Omaha, Nebraska 68122 ("AMCON Acquisition"); EOM ACQUISITION CORP., a Delaware corporation, having its principal place of business at 7807 East 51st Street, Tulsa, Oklahoma 74145 ("EOM Acquisition"); Charles Way LLC, a Missouri limited liability company, having its principal place of business at 7405 Irvington Road, Omaha, Nebraska 68122 ("Charles Way"), AMCON Bismarck Land Co., a Delaware corporation, having its principal place of business at 7405 Irvington Road, Omaha, Nebraska 68122 ("AMCON Bismarck"; and together with AMCON, Chamberlin Natural, Health Food, AMCON Acquisition, EOM Acquisition and Charles Way, each referred to as an "ExistingBorrower" and are collectively referred to as "Existing Borrowers"), Colorado City Land Company, LLC, a Colorado limited liability company, having its principal place of business at 7405 Irvington Road, Omaha, Nebraska 68122 ("Colorado City" or "New Borrower"; and the Existing Borrowers, together with the New Borrower, each a "Borrower" and, collectively, the "Borrowers"), BANK OF AMERICA, N.A., a national banking association (in its individual capacity, "BofA"), as agent (in such capacity as agent, "Agent") for itself and all other lenders from time to time a party to the Credit Agreement (as defined below) ("Lenders"), with an office located at 110 North Wacker Drive, IL4-110-08-03, Chicago, Illinois 60606, and the Lenders party hereto.

**WITNESSETH:**

WHEREAS, Existing Borrowers, the Lenders and Agent have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of April 18, 2011, as

amended by that certain Consent and First Amendment to Second Amended and Restated Loan and Security Agreement dated as of May 27, 2011, that certain Second Amendment to Second Amended and Restated Loan and Security Agreement dated as of July 16, 2013, that certain Third Amendment to Second Amended and Restated Loan and Security Agreement dated as of November 6, 2017, that certain Fourth Amendment to Second Amended and Restated Loan and Security Agreement dated as of March 20, 2020, that certain Fifth Amendment to Second Amended and Restated Loan and Security Agreement dated as of December 22, 2020, that certain Sixth Amendment to Second Amended and Restated Loan and Security Agreement dated as of December 21, 2021, that certain Seventh Amendment to Second Amended and Restated Loan and Security Agreement dated as of June 30, 2022 and that certain Eighth Amendment to Second Amended and Restated Loan and Security Agreement dated as of February 2, 2023 (as may be further amended, restated, supplemented or otherwise modified from time to time, the **"Credit Agreement"**) pursuant to which the Lenders agreed to provide certain credit facilities to the Borrowers;

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WHEREAS, Existing Borrowers have requested that Agent and the Lenders amend the Credit Agreement in order to, among other items, (i) consent to the formation of New Borrower and AMCON's contribution or deemed contribution of \$2,000,000 to New Borrower for purposes of consummating the Purchase (as defined below); (ii) New Borrower be added as a "Borrower" under the Loan Agreement and all other Loan Documents, (iii) consent to the use of up to \$2,000,000 of proceeds of Revolving Loans to acquire substantially all of the assets and certain real property and improvements of Raykasel, LLC, a Colorado limited liability company (the **"Seller"**), in accordance with the terms of that certain Real Estate Purchase Agreement dated as of November 29, 2023 (the **"Purchase Agreement"**) by and between the Seller and Colorado City (such asset acquisition is referred to herein as the **"Purchase"**), (iv) consent to the incurrence of certain additional indebtedness in the amount of \$8,000,000 by Colorado City payable to Seller, evidenced by that certain unsecured Note of even date herewith in the original principal amount of \$8,000,000 (the **"Seller Note"**) and the unsecured guaranty of the obligations under such Note by AMCON in accordance with the terms of that certain Guaranty of even date herewith executed by AMCON in favor of Seller (the **"Guaranty"**), and (v) amend the Loan Agreement in accordance with the terms herein.

WHEREAS, the Agent and the Lenders are willing to accommodate the Borrowers' requests on the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the premises and mutual agreements herein contained and for the purposes of setting forth the terms and conditions of this Amendment, the parties, intending to be bound, hereby agree as follows:

1. Defined Terms; Incorporation of the Credit Agreement. All capitalized terms which are not defined hereunder shall have the same meanings as set forth in the Credit Agreement, and the Credit Agreement, to the extent not inconsistent with this Amendment, is incorporated herein by this reference as though the same were set forth in its entirety. To the extent any terms and provisions of the Credit Agreement are inconsistent with the amendments set forth in paragraph 4

below, such terms and provisions shall be deemed superseded hereby. Except as specifically set forth herein, the Credit Agreement shall remain in full force and effect and its provisions shall be binding on the parties hereto.

2. Joinder to the Loan Agreement and Loan Documents.

(a) The parties hereto agree that New Borrower shall, from and after the date hereof, be deemed a "Borrower" for all purposes of the Loan Agreement and other Loan Documents. Accordingly, New Borrower hereby joins in, assumes and agrees to be bound by all of the conditions, covenants, representations, warranties and other agreements applicable to each Existing Borrower set forth in the Loan Agreement and the other Agreements, and hereby agrees to promptly execute and deliver all further documentation reasonably required by the Agent to be executed by the Borrowers (including New Borrower) in connection with the foregoing. Without limiting the generality of the foregoing, New Borrower hereby agrees to be jointly and severally liable, along with all the Existing Borrowers, for all existing and future Liabilities.

(b) New Borrower hereby assigns, pledges and grants to Agent for the benefit of the Lenders a security interest in all of its right, title and interest in and to the Collateral owned

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by New Borrower to secure the Liabilities in accordance with Section 5 of the Loan Agreement. New Borrower consents to Agent preparing and filing (1) a UCC financing statement naming New Borrower as debtor and the Agent as secured party, and describing New Borrower's Collateral and (2) such other documentation as the Agent may require to evidence, protect and perfect the liens created by the Loan Agreement, as modified hereby.

(c) The foregoing joinder transactions by New Borrower and Existing Borrowers' consent thereto (collectively, the "**Joinder**") constitute legal, valid and binding obligation of each Borrower, and are enforceable against each Borrower in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and similar federal, provincial or state laws or judicial decisions relating to or affecting the enforceability of creditors' rights generally and to general principles of equity.

(d) New Borrower hereby (1) confirms that, after giving effect to the information set forth on the Supplemental Schedules attached hereto as Exhibit A, all of the representations and warranties set forth in Section 11 of the Loan Agreement are true and correct in all respects as of the date hereof with respect to New Borrower, (2) covenants to perform its obligations under the Loan Agreement and the other Loan Documents and (3) specifically represents and warrants to Agent and the Lenders that it is the lawful owner all of, or rights in, its Collateral, free from any lien or security interest in favor of any other person or entity, other than Permitted Liens.

(e) New Borrower hereby represents and warrants that the information with respect to New Borrower set forth on the Supplemental Schedules attached hereto as Exhibit A is true and correct in all material respects as of the date of this Joinder. The Supplemental Schedules

attached hereto as Exhibit A are hereby incorporated into the Loan Agreement as if originally set forth therein as supplements to the existing Schedules to the Loan Agreement.

3. Limited Consent. Subject to the terms and conditions of this Amendment (including, without limitation, Section 8 hereof):

(a) Notwithstanding the terms of Section 12(g) (Use of Proceeds), Section 13(a) (Guaranties), Section 13(b) (Indebtedness), Section 13(d) (Mergers, Sales, Acquisitions, Subsidiaries and Other Transactions Outside the Ordinary Course of Business) and Section 13(f) (Investments; Loans; Transfers), Section 13(h) (to the extent any Equipment included in the assets acquired pursuant to the Purchase constitute fixtures that are not subject to a mortgage in favor of Agent) of the Loan Agreement, provided that no Default or Event of Default exists prior to or immediately following the Purchase, the Lenders hereby consent to (i) consummation of the Purchase in accordance with the terms of the Purchase Agreement; (ii) the use of proceeds of the Revolving Loans in an amount not to exceed \$2,000,000 on or after the Ninth Amendment Effective Date for purposes of completing the Purchase (including by means of AMCON making a capital contribution to Colorado City in such amount); (iii) the formation of the New Borrower; and (iv) the incurrence of the indebtedness represented by the Seller Note and the Guaranty of such Indebtedness by AMCON.

(b) The foregoing consents are expressly limited to the specific transactions described above in this Section 3, and shall not be deemed or otherwise construed to constitute a

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consent to any other transaction, whether or not similar to the transaction described above in this Section 3. The Agent and the Lenders have granted the consents set forth in this Section 3 in this particular instance and in light of the facts and circumstances that presently exist, and the grant of such consents shall not constitute a course of dealing or impair the Agent's or any Lender's right to withhold any similar consents in the future.

4. Amendments to the Credit Agreement. The Credit Agreement is hereby amended as follows:

(a) The following definitions are hereby added to Section 1 of the Credit Agreement to read as follows:

**“Colorado City”** means Colorado City Land Company, LLC, a Colorado limited liability company.

**“Colorado City Guaranty”** means that certain Guaranty by AMCON Distributing Company in favor of Raykasel, LLC dated on or about the Ninth Amendment Effective Date.

**“Colorado City Real Property”** means the real property acquired by Colorado City from Raykasel, LLC on or about the Ninth Amendment Effective Date.

**"Colorado City Seller Note"** means that certain Promissory Note in the principal amount of \$8,000,000 executed by Colorado City Land Company, LLC in favor of Raykasel, LLC, dated on or about the Ninth Amendment Effective Date.

**"Ninth Amendment Effective Date"** means the date of the Consent, Joinder and Ninth Amendment to Second Amended and Restated Loan and Security Agreement among the Borrowers, the Agent and the Lenders party thereto, as indicated in its introductory paragraph.

(b) The definition of **"Fixed Charges"** appearing in Section 1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

**"Fixed Charges"** shall mean for any period, without duplication, the sum of (i) scheduled payments of principal and interest during the applicable period with respect to all indebtedness of Borrowers for borrowed money (including scheduled reductions of the Real Property Sublimit as required pursuant to Section 2(b)(iii) herein but excluding all regularly scheduled payments of principal and interest paid in cash on the Colorado City Seller Note) plus scheduled payments of principal and interest during the applicable period with respect to all capitalized lease obligations of Borrowers, plus unfinanced Capital Expenditures of Borrowers during the applicable period (but excluding (a) all unfinanced Capital Expenditures incurred on or about the Ninth Amendment Effective Date in connection with the purchase of the Colorado City Real Property in an aggregate amount not to exceed \$2,000,000, and (b) unfinanced Capital Expenditures incurred after the Ninth Amendment Effective Date and prior to the earlier of (x) the date upon which the Colorado City Real Property becomes Eligible Real Property hereunder and (y)

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December 31, 2024, to improve the Colorado City Real Property in an aggregate amount not to exceed \$7,000,000), plus payments during the applicable period in respect of income or franchise taxes of Borrowers, plus any dividends or distributions made by Borrowers, plus any payments made by any Borrower in connection with contingent earn-out payments pursuant to any acquisition. For the avoidance of doubt, the exclusion of "unfinanced Capital Expenditures," as used above incurred in connection with the Colorado City Real Property may include Capital Expenditures that are financed utilizing proceeds of Revolving Loans under the Credit Agreement up to the limits set forth herein.

(c) Section 13(a) of the Loan Agreement is hereby amended and restated to read as follows:

(a) **Guarantees.** No Borrower shall assume, guarantee or endorse, or otherwise become liable in connection with, the obligations of any Person, except by endorsement of instruments for deposit or collection or similar transactions in the ordinary course of business and the Colorado City Guaranty. Notwithstanding

anything in this Agreement to the contrary, AMCON Distributing Company's liability under the Colorado City Guaranty with respect to the principal amount of the indebtedness guaranteed thereby shall not exceed \$8,000,000 in the aggregate at any time.

(d) Section 15(m) of the Loan Agreement is hereby amended and restated to read as follows:

(m) Change of Control. The failure of AMCON to own and have voting control of at least one hundred percent (100%) of the issued and outstanding voting equity interest of Chamberlin Natural, Health Food, AMCON Acquisition, EOM Acquisition, Charles Way, AMCON Bismarck, LOL Foods, HF Real Estate and Colorado City.

(e) The Schedules to the Loan Agreement are hereby supplemented with the Schedules attached hereto as Exhibit A for the New Borrower.

5. Representations and Warranties; Covenants; No Default. Except for the representations and warranties of the Borrowers made as of a particular date, the representations and warranties and covenants set forth in Sections 11, 12 and 13 of the Credit Agreement shall be deemed remade as of the date hereof by the Borrowers; provided, however, that any and all references to the Credit Agreement in such representations and warranties shall be deemed to include this Amendment. The Borrowers hereby represent, warrant and covenant that after giving effect to the amendments contained in this Amendment, no Default or Event of Default has occurred and is continuing. Each Borrower represents and warrants to Agent and the Lenders that the execution and delivery by such Borrower of this Amendment and the performance by it of the transactions herein contemplated (i) are and will be within its organizational powers, (ii) have been authorized by all necessary organizational action on its part, and (iii) are not and will not be in contravention of any order of any court or other agency of government, of law or any other indenture, agreement or undertaking to which such Borrower is a party or by which the property

of such Borrower is bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or undertaking, which conflict could reasonably be expected to have a Material Adverse Effect or result in the imposition of any lien, charge or encumbrance of any nature on any of the properties of such Borrower.

6. Affirmation. Except as specifically amended pursuant to the terms hereof, the Credit Agreement and the Other Agreements (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by the Borrowers. The Borrowers covenant and agree to comply with all of the terms, covenants and conditions of the Credit Agreement, as amended hereby, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions. The Borrowers hereby represent and warrant to Agent and Lenders that as of the date hereof, there are no claims, counterclaims, offsets or defenses arising out of or with respect to

the Liabilities. Each Borrower hereby confirms its existing grant to Agent of a Lien on and security interest in the Collateral. Each Borrower hereby confirms that all Liens and security interests at any time granted by it to Agent continue in full force and effect and secure and shall continue to secure the Liabilities. Nothing herein contained is intended to in any manner impair or limit the validity, priority and extent of Agent's existing security interest in and Liens upon the Collateral.

7. **Fees and Expenses.** The Borrowers agree to pay on demand all costs and expenses incurred by Agent in connection with the drafting, negotiation, execution and implementation of this Amendment including, but not limited to, the expenses and reasonable fees of counsel for Agent.

8. **Closing Documents.** This Amendment shall be deemed effective as of the date hereof provided that Borrowers shall deliver to Agent the following documents and/or complete the following requirements (collectively, the "Closing Requirements") upon execution hereof (in each case in form and substance satisfactory to Agent and the Lenders):

- (a) this Amendment executed by the Borrowers and the Agent;
- (b) the documents, instruments and agreements set forth on the Closing Checklist attached hereto as Annex 1; and
- (c) such other documents, instruments, agreements, opinions or certificates as required by Agent.

9. **Continuing Effect.** Except as otherwise specifically set forth herein, the provisions of the Credit Agreement shall remain in full force and effect.

10. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Receipt of an executed signature page to this Amendment by facsimile or other electronic transmission shall constitute effective delivery thereof and shall be deemed an original signature hereunder.

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11. **Organizational Information.** The Borrowers hereby represent and warrant to the Agent that, except as otherwise provided in the Secretary's Certificates of the respective Borrowers delivered to the Agent in partial satisfaction of the Closing Requirements, (a) the formation and organizational documents of each Borrower attached to the Secretary's Certificate of each Borrower and previously delivered by each such Borrower to the Agent have not been modified or altered in any way (the "Original Certificates"), (b) the officers, members or managers, as applicable, for each such Borrower set forth in the Original Certificates that are authorized to execute documents on behalf of each such Borrower remain duly authorized officers, members or managers of each such Borrower, and (c) the resolutions attached to each such Original Certificate have not been modified, rescinded or altered in any way and are sufficient to authorize the execution and delivery of this Amendment and the other agreements, documents and instruments executed and delivered in connection herewith.

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*(Signature Page to Consent, Joinder and Ninth Amendment to  
Second Amended and Restated Loan and Security Agreement)*

IN WITNESS WHEREOF, the parties hereto have duly executed this Consent, Joinder and Ninth Amendment to Second Amended and Restated Loan and Security Agreement as of the date first above written.

**EXISTING  
BORROWERS:**

**AMCON DISTRIBUTING COMPANY**, a Delaware corporation

By: /s/Charles J. Schmaderer  
Title: Vice President, Chief Financial Officer, and Secretary

**CHAMBERLIN NATURAL FOODS, INC.**, a Florida corporation

By: /s/Andrew C. Plummer  
Title: Secretary

**HEALTH FOOD ASSOCIATES, INC.**, an Oklahoma corporation

By: /s/Charles J. Schmaderer  
Title: Secretary

**AMCON ACQUISITION CORP.**, a Delaware corporation

By: /s/Andrew C. Plummer  
Title: President

**EOM ACQUISITION CORP.**, a Delaware corporation

By: /s/Andrew C. Plummer  
Title: Secretary

**CHARLES WAY LLC**, a Missouri limited liability company

By: /s/Charles J. Schmaderer  
Title: Secretary

**AMCON BISMARCK LAND CO., a Delaware corporation**

By: /s/Andrew C. Plummer

Title: President

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*(Signature Page to Consent, Joinder and Ninth Amendment to  
Second Amended and Restated Loan and Security Agreement)*

**NEW BORROWER:** **COLORADO CITY LAND COMPANY, LLC**, a Colorado limited liability company

By: /s/Charles J. Schmaderer

Title: Secretary

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*(Signature Page to Consent, Joinder and Ninth Amendment to  
Second Amended and Restated Loan and Security Agreement)*

**LENDERS:** **BANK OF AMERICA, N.A.**, as Agent and a Lender

By: /s/Daniel Rubio

Daniel Rubio

Vice President

Revolving Loan Commitment: \$100,000,000.00

(Signature Page to Consent, Joinder and Ninth Amendment to  
Second Amended and Restated Loan and Security Agreement)

**LENDERS:**

BMO BANK N.A., f/k/a BMO Harris Bank N.A.,  
as a Lender

By: /s/Steve Teufel

Title: Director

Revolving Loan Commitment: \$50,000,000.00

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**Exhibit 10.2**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT is made and entered into this 11th day of March 2024, by and between Burklund Distributors, Inc., an Illinois corporation ("Seller"), and AMCON Distributing Company, a Delaware corporation ("Buyer").

**RECITAL**

Seller desires to sell to Buyer, Buyer desires to acquire from Seller, substantially all of the assets of Seller (excluding certain specified excluded assets), and Buyer desires to assume certain liabilities of Seller, upon the terms and conditions hereinafter set forth.

**AGREEMENT**

In consideration of the above premises, the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

**1.1 Definitions.** In addition to terms defined elsewhere in this Agreement, the following terms have the meanings assigned to them herein, unless the context otherwise dictates, both for purposes of this Agreement and all Schedules and Exhibits hereto:

"401k Plan" has the meaning set forth in Section 8.4(c).

"Accounts Receivable" has the meaning set forth in Section 2.1(e).

"Acquisition Proposal" has the meaning set forth in Section 8.11.

"Actual Working Capital Amount" has the meaning set forth in Section 3.2(e).

"Agreement" means this Asset Purchase Agreement, as amended from time to time by the parties hereto, together with all Schedules and Exhibits hereto.

"Assets" has the meaning set forth in Section 2.1.

"Assumed Contracts" has the meaning set forth in Section 2.1(b).

"Assumed Liabilities" has the meaning set forth in Section 4.2(b) hereof.

"Benefit Plans" means any and all pension, retirement, savings, disability, medical, dental, health, life, death benefit, group insurance, profit sharing, deferred compensation, stock options or other stock incentive, bonus incentive, vacation pay, sick pay, severance or termination pay, employment agreement, "cafeteria" or "flexible benefit" plan under Section 125 of the Code, "employee benefit plan" as defined in Section 3(3) of ERISA, or other employee or director benefit plan, trust, arrangement, contract, agreement, policy or commitment, whether formal or informal, written or oral, under which employees or former

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employees of Seller with respect to the Business are entitled to participate by reason of their current or prior employment by Seller.

"Bulk Sales" has the meaning set forth in Section 4.4(b).

"Business" means the wholesale distribution business presently conducted by Seller, including the wholesale distribution of tobacco, candy and other merchandise items to commercial customers.

"Business IT Systems" means all software, computer hardware, servers, networks, platforms, peripherals and similar or related items of automated, computerized or other information technology networks and systems (including telecommunications networks and systems for voice, data and video) owned, leased, licensed or used (including through cloud-based or other third-party service providers) in the conduct of the Business.

"Buyer Parties" has the meaning set forth in Section 8.5(b).

"Cash Purchase Price" has the meaning set forth in Section 3.1.

"Claim Notice" has the meaning set forth in Section 11.3(a).

"Closing" means the consummation of the transactions contemplated by this Agreement, including the transfer by Seller to Buyer of the Assets.

"Closing Date" means the date of the Closing established pursuant to Section 4.1 hereof.

"Closing Date Cash Payment" has the meaning set forth in Section 3.2(b).

"COBRA" means Consolidated Omnibus Budget Reconciliation Act, as amended.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

**"Consulting Agreements"** has the meaning set forth in Section 9.5(c).

**"Contracts"** means all contracts, agreements, understandings, notes, instruments, leases, subleases, mortgages, licenses, commitments or binding arrangements, express or implied, oral or written, of any kind or nature whatsoever by which any Person is bound, and all amendments thereto.

**"Cut-Off Date"** has the meaning set forth in Section 12.1(b).

**"Damages"** has the meaning set forth in Section 11.1.

**"Determination"** has the meaning set forth in Section 3.2(c).

**"Environmental Law"** means any federal, state, local or foreign statute, regulation, ordinance, order, agreement, permit, plan, rule of common law or other legal requirement in any

way relating to the protection of human health, the environment and natural resources, or relating to Hazardous Substance handling, treatment, storage, disposal or transportation, or arranging therefor, and all amendments thereto, and any analogous state and local laws and the regulations promulgated pursuant thereto.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

**"Estimated Working Capital Amount"** has the meaning set forth in Section 3.2(a).

**"Exception Documents"** has the meaning set forth in Section 8.5(a).

**"Excluded Assets"** has the meaning set forth in Section 2.2.

**"Fundamental Reps"** means, collectively, Section 6.1 (Organization), Section 6.2 (Authority; Binding Effect), Section 6.5 (Financial Statements), Section 6.6(a) (Title and Condition of Assets), Section 6.7(b) (Intellectual Property), Section 6.9 (Taxes), Section 6.16 (Brokers and Finders), Section 7.1 (Organization), Section 7.2 (Authority; Binding Effect) and Section 7.5 (Brokers and Finders).

**"GAAP"** means United States generally accepted accounting principles consistently applied.

**"Hazardous Substance"** means any substance, material or waste which is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as "hazardous," "toxic," "pollutant," "contaminant," "radioactive," "biohazard," or words of similar meaning or effect, including petroleum and its compounds and by-products, asbestos, polychlorinated biphenyls, radon, mold or other fungi, and urea formaldehyde insulation.

"Indemnified Party" has the meaning set forth in Section 11.3.

"Indemnifying Party" has the meaning set forth in Section 11.3.

"Inspections" has the meaning set forth in Section 8.5(b).

"Intellectual Property" has the meaning set forth in Section 6.7(a).

"Inventory" means the aggregate value of the inventory of merchandise for resale of the Business as of Closing that is good, saleable and turning in the ordinary course of business and comprises a part of the Assets, with the amount of such inventory to be based upon a physical inventory account taken jointly by representatives of Buyer and representatives of Seller on the Closing Date, and the value of such inventory to be based upon the manufacturer's list price less cash discounts and manufacturer off invoice allowances available for retail, as shown on the books and records of Seller as of Closing.

"IRS" means the United States Internal Revenue Service.

"Knowledge" means (i) with respect to Seller, all facts and information which are either within the actual knowledge of any of the Specified Shareholders, or that should have been

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known to such persons in the exercise of reasonable care and after due inquiry, and (ii) with respect to Buyer, all facts and information which are either within the actual knowledge of any of the executive officers or directors of Buyer, or that should have been known to such persons in the exercise of reasonable care and after due inquiry.

"Lease Value" means the aggregate amount of liabilities under the leases relating to truck equipment leases identified on Schedule 1.1 hereto being satisfied, paid and discharged by Seller prior to Closing.

"Lien" means any lien, pledge, claim, charge, security interest, hypothecation or encumbrance of any nature whatsoever.

"Material Adverse Effect" means with respect to the consequences of any event, fact or circumstance (including the occurrence or non-occurrence of any event, fact or circumstance) applicable to Seller or the Business, that such event, fact or circumstance has caused, is causing or is reasonably likely to cause, directly, indirectly or consequentially, singularly or in the aggregate with other events, facts or circumstances, any material adverse effect on the Assets or the financial condition, operating results or operations of Seller or the Business or any Damages in excess of \$100,000; provided, however, that in no event shall any of the following changes, in and of themselves, constitute a "Material Adverse Effect": (i) any change resulting from conditions affecting the wholesale distribution industry generally and which does not have a disproportionate effect on the Business, (ii) any change resulting from general business or economic conditions in the United States which does not have a disproportionate effect on the Business, or (iii) any change

resulting from compliance by Seller with the terms of, or the taking of any action contemplated by, this Agreement.

"Neutral Accountant" has the meaning set forth in Section 3.2(d).

"Notice Period" shall have the meaning set forth in Section 11.3(a).

"Organizational Documents" of an entity means (a) (i) if a corporation, its articles of incorporation or certificate of incorporation, as the case may be, and bylaws, (ii) if a limited liability company, its certificate of formation or articles of organization, as the case may be, and limited liability company agreement or operating agreement, as the case may be, (iii) if a limited partnership, its certificate of limited partnership and agreement of limited partnership, (iv) if a general partnership, its partnership agreement, and (b) any other Contracts relating to the creation, formation, organization, governance or ownership of such entity.

"Permitted Encumbrances" has the meaning set forth in Section 4.2(a).

"Person" means a natural person, partnership, limited partnership, joint venture, corporation, limited liability company, trust, government, government agency and any other legal entity.

"Phase I and/or Phase II environmental site assessments" has the meaning set forth in Section 8.5(b).

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"Prepaid Assets" means the aggregate amount of prepaid expenses, including, but not limited to, prepaid inventory of the Business included on Schedule 2.1(f) hereto being acquired by Buyer as of the Closing, as mutually agreed upon by Buyer and Seller from the books and records of Seller as of Closing.

"Promissory Note" has the meaning set forth in Section 3.1.

"Purchase Price" has the meaning set forth in Section 3.1.

"Real Property" means (i) the real property identified on Schedule 2.1(a) hereto, and (ii) the leasehold estates in real property created by the leases and subleases, if any, included among the Contracts listed on Schedule 2.1(b) or Schedule 6.8 hereto.

"Reference Point" has the meaning set forth in Section 3.2(a).

"Required Financial Statements" has the meaning set forth in Section 8.7.

"Retained Liabilities" has the meaning set forth in Article 5 hereof.

"Review Period" has the meaning set forth in Section 3.2(c).

"Revenue Department" has the meaning set forth in Section 4.4(b).

**"Shareholders"** means all of Persons owning capital stock or any securities convertible into capital stock of Seller.

**"Specified Shareholder"** means each of Jonathan D. Burkland and Robert B. Hackett Sr.

**"Stop Order"** has the meaning set forth in Section 4.4(b).

**"Supplemental Information"** has the meaning set forth in Section 8.13.

**"Survey"** has the meaning set forth in Section 8.5(a).

**"Tax" or "Taxes"** means all taxes, levies or other similar governmental charges or fees of any kind whatsoever, including all federal, state, local and foreign income, corporation, gross receipts, franchise, capital gains, transfer, registration, sales, use, occupation, property (personal or otherwise), ad valorem, excise, cigarette, tobacco, escheatment, unclaimed property, windfall profits, stamp, payroll, worker's compensation disability, withholding, social security, alternative, add-on and other taxes (whether payable directly or by withholding and whether or not requiring the filing of a tax return), and all estimated taxes, additions to tax, and penalties and interest imposed thereon or with respect thereto.

**"Title Company"** means a title insurance company selected by Buyer.

**"Title Commitment"** has the meaning set forth in Section 8.5(a).

**"Title Policy"** means one or more policies of title insurance under which the Title Company insures, as the case may be, title to, or the leasehold interest in, the Real Property included in the Assets and which conform to the following specifications:

- (a) The form of the policy will be the current approved form of ALTA Owner's Policy;
- (b) The policy will be issued and underwritten by the Title Company;
- (c) The insured will be Buyer (and/or its designated affiliate);
- (d) The policy will be in an amount reflecting the value of the interests insured, consistent with Schedule 3.3 hereto;
- (e) There will be no exceptions to coverage other than the Permitted Encumbrances. Except with respect to the Permitted Encumbrances, the Title Policy shall not contain any exceptions with respect to:
  - (i) Rights or claims of parties in possession;
  - (ii) Encroachments, overlaps, boundary line disputes or any other matters which would be disclosed by an accurate survey and inspection;

- (iii) Easements or claims of easements not shown by the public records;
- (iv) Any Lien, or right to a Lien, for services, labor or materials heretofore or hereafter furnished; and
- (v) Any other exceptions which may be designated or included as standard exceptions in the area where such Real Property is located; and

(f) The policy will contain such endorsements as Buyer may reasonably require (and specified by Buyer prior to Closing), including a zoning endorsement showing the zoning classification of the Real Property and confirming that the current use of such Real Property is in conformance with the applicable zoning laws and use restrictions. Buyer shall pay for any and all endorsements required by Buyer hereunder.

**"Vacation Accrual"** means the aggregate liability for unused vacation time to which employees of the Business who are hired by Buyer are entitled as of the Closing (regardless of whether such unused vacation time and sick time is accrued on the books and records of Seller), as mutually agreed upon by Buyer and Seller from the books and records of Seller as of Closing.

## **ARTICLE 2. PURCHASE AND SALE OF ASSETS**

**2.1 Assets.** Subject to the terms and conditions hereof, at the Closing Seller shall validly sell, assign, transfer, grant, bargain, deliver and convey to Buyer (or its designated affiliate) its entire right, title and interest in and to all of the assets and properties owned by Seller and used by Seller in the Business of every type and description, tangible and intangible,

wherever located and whether or not reflected on the books and records of Seller (collectively, the "Assets"), including the following assets and properties (but specifically excluding the Excluded Assets):

- (a) The real property and fixtures described on Schedule 2.1(a) hereto;
- (b) All rights of Seller under the Contracts of the Business set forth on Schedule 2.1(b) hereto (collectively, the "Assumed Contracts"); provided that, with respect to any such Contracts that are not capable of being assigned or transferred to Buyer without the consent or waiver of any other Person, such Contracts shall be assigned and transferred to Buyer only to the extent that such consents or waivers have been obtained and are in full force and effect at the Closing;
- (c) All fixed assets and other personal property of the Business, including office supplies, office furniture, computer hardware and software, business machines, machinery, equipment (including vehicles, tools, supplies and leasehold improvements), and including the fixed assets and personal property set forth on Schedule 6.6(d) hereto;

(d) All inventories of merchandise, finished goods and supplies of the Business, on hand and in transit;

(e) All customer trade accounts receivable arising from the Business and owned by Seller as of the Closing Date, as reflected on the books and records of Seller, including receivables, notes, and other evidences of amounts receivable by the Business (in each case, only to the extent that such receivable are current within their stated terms or, if not current, are otherwise agreed upon by Buyer and Seller), and any charged off accounts, whether or not such accounts currently have legal judgments (or other forms of liens or legal encumbrances) granted in favor of Seller (collectively, the "Accounts Receivable") (but, for the avoidance of doubt, excluding any items included in the definition of Excluded Assets, including, without limitation, all accrual and amounts receivable and payable with respect to manufacturer's rebate or other accrual programs applicable to the Business);

(f) The Prepaid Assets of the Business set forth on Schedule 2.1(f) hereto; and

(g) Except for any Excluded Assets set forth on Schedule 2.2, all telephone numbers, telephone lists, Business records and files, customer lists, promotional materials, proprietary marketing products and applications, intangible property, Intellectual Property and goodwill of the Business, including, but not limited to, all trademarks, service marks, trade names, Internet domain names and corporate names, and similar designations of source or origin, including all common law marks, and other intellectual property rights set forth on Schedule 6.7 hereto and all goodwill and other rights associated therewith and the corporate name of Seller.

**2.2 Excluded Assets.** Described on Schedule 2.2 hereto are those assets and properties owned or used by Seller that are being retained by Seller, are specifically not being purchased by or transferred to Buyer and are excluded from the Assets (the "Excluded Assets").

**2.3 Non-Assignable Contracts.** This Agreement and any document delivered hereunder shall not constitute an assignment or an attempted assignment by Seller of any right contemplated to be assigned to Buyer hereunder as a part of the Assets:

(a) Which is not assignable by Seller without the consent of a third party if such consent has not been obtained and such assignment or attempted assignment would constitute a breach thereof; or

(b) If the remedies for the enforcement or any other particular provisions thereof available to Seller would not pass to Buyer.

Seller shall use commercially reasonable efforts to obtain such consents of third parties as may be necessary for the assignment of any such right by Seller. To the extent that such right of Seller is not assignable or where consents to the assignment thereof cannot be obtained as herein

provided, Seller shall, at the Closing, assign to Buyer the full benefit thereof and, at Buyer's request, take such other actions as are reasonable and lawful as to Seller and Buyer, and which result in the respective benefits and obligations being apportioned between Seller, on the one hand, and Buyer, on the other hand, in a manner that furthers the purpose and intent of this Agreement.

### **ARTICLE 3. PURCHASE PRICE**

**3.1 Purchase Price.** The purchase price for the Assets shall be \$18,900,000, subject to adjustment pursuant to Section 3.2 hereof (the "Purchase Price"). The Purchase Price shall be payable by Buyer to Seller as follows: (a) \$3,900,000 in the form of a promissory note of Buyer made payable to Seller substantially in the form of Exhibit A hereto (the "Promissory Note"); and (b) the remaining amount of Purchase Price in cash (the "Cash Purchase Price").

**3.2 Purchase Price Adjustment.**

(a) At the Closing, the Cash Purchase Price shall be adjusted based on the estimated aggregate value of Accounts Receivable, Inventory and Prepaid Assets (such aggregate value, the "Estimated Working Capital Amount") as compared to a \$14.7 million reference point (the "Reference Point"), and further adjusted based on the Lease Value and Vacation Accrual. The Cash Purchase Price shall be: (i) increased by the amount, if any, by which the Estimated Working Capital Amount exceeds the Reference Point; (ii) decreased by the amount, if any, by which the Reference Point exceeds the Estimated Working Capital Amount; (iii) increased by the Lease Value, if any; and (iv) decreased by the Vacation Accrual.

(b) The net amount after giving effect to the adjustments set forth in Section 3.2(a) above shall be the "Closing Date Cash Payment". Any adjustments made pursuant to this Section 3.2 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by law.

(c) Within ten (10) days following Closing, Buyer shall provide Seller with a written determination of aggregate value of Accounts Receivable, Inventory and Prepaid Assets as of the Closing Date (the "Determination"). Seller shall have a period of ten (10) days after receipt of the Determination (the "Review Period") to furnish to Buyer written notification of any objections to the aggregate value of Accounts Receivable, Inventory and Prepaid Assets stated in the Determination. Buyer shall provide Seller with reasonable access to all records and work papers necessary to compute and verify the Determination. If Seller fails to give said notice within the Review Period, then the valuation of Accounts Receivable, Inventory and Prepaid Assets stated in the Determination shall be final, and within ten (10) days after the Review Period, Buyer's Determination shall become final and binding. In the event there is a good faith dispute as to any portion of the Determination, all undisputed amounts shall be paid within ten (10) days after the Review Period.

(d) If the Seller timely objects to the Determination during the Review Period, then Seller and Buyer shall attempt in good faith to resolve such dispute within thirty (30) days from the end of the Review Period. If Seller and Buyers cannot reach agreement within such thirty (30) day period, then the dispute shall be promptly referred to a third-party regionally recognized certified public accountant with no preexisting relationship with either Buyer, Seller, or their affiliates (the "Neutral Accountant") mutually agreed upon by Buyer and Seller. Each party shall thereupon furnish to the Neutral Accountant such reasonable work papers and other documents and information relating to the calculation of the Determination as that party desires or as the Neutral Accountant requests, and each party will be afforded the opportunity to present information to the Neutral Accountant and to discuss the determination of the Determination with the Neutral Accountant. Following such review, the Neutral Accountant shall deliver a written opinion setting forth its final determination of the aggregate value of Accounts Receivable, Inventory and Prepaid Assets as of the Closing Date, which shall be final, binding and conclusive on the parties and shall be used in computing the amount of any adjustment to the Purchase Price. All fees and expenses of the Neutral Accountant shall be shared equally between Seller and Buyer. All amounts payable by either Buyer or Seller pursuant to this Section 3.2 shall be paid within ten (10) days after the date on which the Neutral Accountant delivers its written opinion setting forth its final determination as provided in this Section 3.2(d).

(e) In the time provided in Section 3.2(c) or 3.2(d), as applicable, the Cash Purchase Price shall be adjusted in the following manner: either (1) an increase by the amount, if any, by which the Actual Working Capital Amount (as defined below) is greater than the Estimated Working Capital Amount, or (2) a decrease by the amount, if any, by which the Actual Working Capital Amount is less than the Estimated Working Capital Amount. For purposes of this Section, "Actual Working Capital Amount" shall be the final determination of the aggregate value of Accounts Receivable, Inventory and Prepaid Assets as of the Closing Date. If Actual Working Capital exceeds Estimated Working Capital, Buyer shall pay an amount equal to such excess to Seller within the time periods provided in Section 3.2(c) or 3.2(d), as applicable. If Estimated Working Capital exceeds Actual Working Capital, Seller shall pay an amount equal to such excess to Buyer within the time periods provided in Section 3.2(c) or 3.2(d), as applicable; provided that if

Seller fails to timely make such payment, Buyer shall be entitled to offset such amount against any amounts due or to become due to Seller under the Promissory Note, in addition to Buyer's other remedies. The exercise of such right of offset by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute a breach or violation of any provision of this Agreement or any agreements contemplated hereby (including, without limitation, the Promissory Note).

**3.3 Allocation of Purchase Price.** Buyer and Seller agree to allocate the Purchase Price to the Assets in the manner provided on Schedule 3.3 hereto. Buyer and Seller shall file and cause to be filed all Tax returns, and execute such other documents as may be required by any

taxing authority, in a manner consistent with Schedule 3.3. Buyer and Seller shall prepare IRS Form 8594 pursuant to Section 1060 of the Code relating to the transactions contemplated by this Agreement based on Schedule 3.3 and deliver such form to each other. Buyer and Seller shall file, or cause the filing of, such form with each relevant taxing authority.

**3.4 Noncompetition Agreement.** At the Closing on the Closing Date, Seller and each Specified Shareholder will enter into the Noncompetition Agreement in the form attached hereto as Exhibit F.

#### **ARTICLE 4. CLOSING**

**4.1 Closing Date.** Subject to earlier termination of this Agreement pursuant to Article 12, the Closing will take place at the offices of Seller, located at 2500 N. Main Street, Suite 3, East Peoria, Illinois 61611, or by exchange of executed documents by electronic transmission (followed by an exchange of executed originals after the Closing), at 10:00 a.m. CT on the later of (i) the third business day after satisfaction or waiver of the conditions set forth in Articles 9 and 10 required to be satisfied prior to the Closing (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), and (ii) such other date as Buyer and Seller may agree in writing; provided, however, that the Closing shall not occur earlier than March 22, 2024. Such date is referred to as the "Closing Date." The Closing will be deemed effective for all purposes hereunder as of 12:01 a.m. on the Closing Date.

**4.2 Transfer of Assets.** At the Closing:

(a) Seller shall sell, transfer, assign, grant, bargain, deliver and convey to Buyer all right, title and interest in and to the Assets, free and clear of any and all Liens (except that the Real Property included in the Assets may be subject to (i) the Liens identified on Schedule 4.2(a) hereto, and (ii) statutory liens for current Taxes with respect to the Assets, including the Real Property, that are not yet due and payable (collectively, the "Permitted Encumbrances")). The transactions contemplated by this Section 4.2(a) shall be effected or evidenced by delivery by Seller to Buyer of bills of sale, assignments, special warranty deeds and other documents of transfer, each of which must be acceptable in form and substance to Buyer and Seller.

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(b) Buyer shall assume the obligations of Seller accruing after the Closing (and not attributable to any violation, breach or failure to perform occurring prior to the Closing) under the Assumed Contracts (collectively, the "Assumed Liabilities").

**4.3 Payments by Buyer.** Subject to the terms and conditions of this Agreement, Buyer shall make the following payments:

(a) At the Closing, Buyer will deliver to Seller the aggregate amount equal to the Closing Date Cash Payment by bank wire transfer of immediately available federal funds to an account designated by Seller.

(b) At the Closing, Buyer will deliver to Seller the Promissory Note.

**4.4 Sales and Transfer Taxes; Bulk Sales; Proration of Real Property Taxes.**

(a) **Sales and Transfer Taxes.** Seller shall be responsible for and agree to pay when due all sales, use, transfer and other like Taxes arising out of the transfer of the Assets by Seller and the other transactions contemplated hereunder.

(b) **Bulk Sales.** No later than ten (10) business days after the execution and delivery of this Agreement by Seller and Buyer, Buyer shall file a notice of sale of business assets with the Illinois Department of Revenue Bulk Sales Unit pursuant to 35 ILCS 120/5 and 5/902 (the "Revenue Department"). Seller shall cooperate and provide such information as necessary in connection with the filing of such notices. In connection with the sale of the Real Property to Buyer, Seller agrees to pay any and all taxes and fees arising under the bulk sales laws of the State of Illinois ("Bulk Sales"). It shall be a condition precedent to the obligation of Buyer to close the transaction contemplated in this Agreement that Buyer receive Bulk Sales release letters from the Revenue Department; provided, however, in the event that prior to Closing, the Revenue Department issues a certificate or statement (a "Stop Order") either stating that any tax, fee, penalty, or interest is assessed against Seller but unpaid or directing Buyer to withhold funds from the purchase price, Buyer may withhold from the Purchase Price an amount equal to the amounts set forth in such Stop Order and deposit such amounts with the Title Company, as escrowee, which shall be held and disbursed by the Title Company pursuant to an escrow agreement to be executed by Buyer, Seller, and the Title Company, as escrowee, on the Closing Date, which escrow agreement shall be in a form reasonably satisfactory to Buyer and Seller and in compliance with applicable Bulk Sales laws and shall provide for the immediate release of the deposited funds to the Revenue Department if any such tax, fee, penalty, or interest is claimed against Buyer ("Bulk Sales Escrow"). Seller hereby agrees to indemnify Buyer and hold Buyer harmless from and against any and all claims brought by the Revenue Department seeking to recover any unpaid taxes, fees, penalties, or interest owed by Seller under the aforesaid acts resulting from the Buyer's purchase of the Real Property.

(c) **Proration of Real Property Taxes.** All Taxes applicable to the Real Property for any fiscal years of the applicable taxing authorities prior to the year of Closing, including any penalties and/or interest thereon, shall be paid by Seller at or before Closing. All Taxes applicable to the Real Property for the fiscal year of the applicable taxing

authorities during which the Closing occurs shall be prorated as of the Closing Date based upon the most recent ascertainable amount of such Taxes. For the avoidance of doubt, an illustrative example of Seller's real estate Tax liability and obligation utilizing a hypothetical March 31, 2024 Closing Date would be calculated as follows: (i) all real estate Taxes assessed and not paid for the calendar year 2023, plus (ii) all estimated real estate Taxes due for January 2024 through and including March 2024.

4.5 Uncollected Accounts Receivable. During the sixty (60) days following the Closing Date, Buyer will use its commercially reasonable efforts to collect the accounts receivables that were included in the calculation of the Purchase Price in a manner consistent with Buyer's normal practices, but shall not be obligated to initiate or participate in any litigation, retain a professional collection agency, grant any financial or other accommodation to any third party or incur any third party costs in such collection efforts. From time to time and upon request, Buyer will provide information concerning such unpaid accounts receivable as reasonably requested by Seller. Upon the expiration of such sixty (60) day period, Buyer will review the remaining outstanding accounts receivable that were included in the calculation of the Purchase Price and will notify Seller of such remaining outstanding accounts receivable, on a customer by customer basis. Within ten (10) days after receipt of such notice, Seller shall pay to Buyer an amount equal to the book value for such remaining outstanding accounts receivable (utilizing the same book value for such outstanding accounts receivable as was determined, and adjusted as necessary, by mutual agreement of Buyer and Seller in accordance with Section 3.2); provided that if Seller fails to timely make such payment, Buyer shall be entitled to offset the amount equal to the book value for such remaining outstanding accounts receivable pursuant to this paragraph against any amounts due or to become due to Seller under the Promissory Note, in addition to Buyer's other remedies. The exercise of such right of offset by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute a breach or violation of any provision of this Agreement or any agreements contemplated hereby (including, without limitation, the Promissory Note).

## **ARTICLE 5. LIABILITIES NOT ASSUMED BY BUYER**

Anything in this Agreement to the contrary notwithstanding, Seller shall be responsible for all liabilities and obligations of Seller and the Business not hereby expressly assumed by Buyer (the "Retained Liabilities"), and Buyer shall not assume, or in any way be liable or responsible for, any liabilities or obligations of Seller or of the Business, except the Assumed Liabilities. Without limiting the generality of the foregoing, Buyer shall not assume, or in any way be liable or responsible for, the following Retained Liabilities:

- (a) Any liability or obligation of Seller arising out of or in connection with the negotiation and preparation of this Agreement and the consummation and performance of the transactions contemplated hereby, including any Tax liability or claims of Shareholders so arising;
- (b) Any liability or obligation of Seller with respect to employment or consulting agreements, pension, profit sharing, health, welfare and other Benefit Plans, or amounts owing for commissions or compensation, termination, severance or other payments to the present or former employees, officers, directors, managers, partners or

shareholders of Seller, including any of the contribution history or existing withdrawal liabilities associated with any multi-employer pension plan and any withdrawal liability directly or indirectly resulting from the sale of the Assets under Subtitle E, Part 1 of ERISA,

in each case that are attributable to conditions existing or events occurring prior to the Closing or that are triggered by the consummation of the transactions contemplated by this Agreement;

(c) Any obligations or liabilities with respect to the present or former employees, officers, directors, managers, partners or shareholders of Seller to the extent arising out of their employment or position with Seller, including claims under any federal, state, local or other laws, statutes, rules, regulations, ordinances, codes, orders or authorizations, including worker's compensation claims, ERISA claims, COBRA claims, age claims, civil rights laws claims, claims under the Fair Labor Standards Act, claims under the Labor Management Relations Act, employment discrimination claims of all types, sexual harassment claims, pension fund liability (whether for current or unfunded accrued liabilities), Americans With Disabilities Act claims and Occupational Safety and Health Act claims, and any obligations or liabilities with respect to the consultants of Seller to the extent arising out of their engagement with Seller;

(d) Any liability or obligation of Seller arising under any Assumed Contract that is attributable to any violation, breach or failure to perform occurring prior to Closing, and any liability or obligation of Seller arising under any Contract that is not assumed by Buyer;

(e) Any liability or obligation of Seller, or any consolidated group of which Seller is a member, for any foreign, federal, state, county or local Taxes of any kind or nature, or any interest or penalties thereon;

(f) Any liability or obligation under COBRA or other applicable law with respect to employees of Seller (whether salary, hourly or otherwise) who are not employed by Buyer immediately upon Closing;

(g) Any liability or obligation of Seller arising under any commercial or other insurance policy, including, but not limited to, any premiums, letters of credit or payments for "run-off" coverage; or

(h) Any liability or obligation of Seller in respect of any Excluded Asset.

## **ARTICLE 6. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows:

6.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois. Seller has the requisite power and authority to own, operate and lease its assets and to conduct the Business as and where the Business is now conducted by it. Seller does not own any subsidiary and does not hold any equity or other ownership interest in any other Person. Seller is qualified to do business and is in

good standing under the laws of each jurisdiction in which the nature of its Business or of the properties owned or leased by it makes such qualification necessary, which jurisdictions are Illinois, Iowa, Indiana and Missouri.

**6.2 Authority; Binding Effect.** Seller and each Specified Shareholder has the right, power, authority, and capacity to execute and deliver this Agreement and all other agreements contemplated hereby to be entered into by Seller or such Specified Shareholder, to perform the obligations hereunder and thereunder on its or their part to be performed and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller and each Specified Shareholders of this Agreement and all other agreements and documents contemplated hereby to be entered into by any of them and the performance by Seller and each Specified Shareholders of their respective obligations hereunder and thereunder have been duly approved by all necessary action, and no further approvals are required by the officers, directors, managers or shareholders of Seller in connection therewith. The board of directors of Seller has unanimously approved Seller's execution and delivery of this Agreement and all other agreements contemplated hereby and thereby and Seller's performance of its obligations hereunder and thereunder and all requisite Shareholders have approved the sale of the Assets to Buyer, and all of the Shareholders have waived any and all appraisal rights or rights to dissent to the transactions contemplated hereunder or thereunder pursuant to applicable law or Seller's Organizational Documents. This Agreement constitutes, and when executed and delivered, all other agreements contemplated hereby to be entered into by Seller or any Specified Shareholder constitute, the legal, valid, and binding obligations of Seller or Specified Shareholder a party thereto, enforceable against Seller or Specified Shareholder a party thereto in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or affecting creditors' rights generally and to general equity principles (whether such enforceability is considered in a proceeding at law or in equity).

**6.3 No Creation of Violation, Default, Breach or Encumbrance.** The execution, delivery and performance of this Agreement and all other agreements contemplated hereby by Seller and each Specified Shareholder a party thereto does not (a) violate (i) any statute, rule or regulation to which such Person is subject or (ii) any order, writ, injunction, decree, judgment or ruling of any court, administrative agency or governmental body to which such Person is subject, (b) conflict with or violate any provision of the Organizational Documents of Seller, or (c) assuming receipt of the consents set forth in Schedule 6.3 hereto, require the consent of any Person or result in the breach of or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, violate, conflict with, breach or give rise to any right of termination, cancellation or acceleration of, or to a loss of benefit to which Seller is entitled, under any Contract to which Seller is a party.

**6.4 Compliance With Law.** Seller is not in violation of any statute, law, rule or regulation, or any order, writ, injunction or decree of any court, administrative agency, governmental body or arbitration tribunal, to which Seller or any of the Assets is subject in connection with the operation of the Business.

## 6.5 Financial Statements.

(a) Seller has delivered to Buyer (i) the audited balance sheets of Seller as of December 31, 2022 and January 1, 2022, respectively, and the related audited statements of operations for each of the three respective fiscal years then ended, and the notes thereto, together with the report of such Seller's independent certified public accountants thereon, (ii) the unaudited balance sheet of Seller as of December 31, 2023, and the related internal statements of operations for the 12 months then ended, and (iii) the unaudited balance sheet of Seller as of January 27, 2024, and the related internal statements of operations for the one month then ended.

(b) The financial statements referred to in Section 6.5(a) above fairly present the financial position and results of operation of Seller as of the relevant dates thereof and for the periods covered thereby in accordance with GAAP, subject, in the case of the unaudited financial statements, to changes resulting from normal year-end adjustments and reclassifications.

(c) Except as set forth in the December 31, 2022 audited balance sheets of Seller, Seller has no liabilities or obligations, direct or contingent, accrued or otherwise, of a nature customarily reflected in financial statements in accordance with GAAP, except those incurred after such date in the ordinary course of business consistent with past practice.

## 6.6 Title and Condition of Assets.

(a) Seller has good and indefeasible title to all of the Assets, free and clear of all Liens (except for (i) the Liens identified on Schedule 6.6(a) which are being satisfied, discharged and released at the Closing and (ii) in the case of the Real Property included in the Assets, the Permitted Encumbrances). All of the Assets are in a Seller's possession and control. At the Closing, Seller will sell, transfer, assign, grant, bargain, deliver and convey to Buyer all right, title and interest in and to the Assets, free and clear of any and all Liens except, in the case of any Real Property included in the Assets, the Permitted Encumbrances.

(b) Seller owns or has irrevocable rights to use and is transferring to Buyer at Closing all assets, property and rights as are necessary or useful for the conduct of Business as the Business has been conducted by Seller, except for the Excluded Assets.

(c) Schedule 2.1(a) hereto contains an accurate and complete list of all real property related to the operation of the Business in which Seller has an ownership interest (including real property being conveyed to Buyer at Closing as a part the Assets), including an accurate and legally sufficient description of each parcel of such real property and the nature of Seller's interest therein.

(d) Schedule 6.6(d) hereto contains an accurate and complete list of all fixed assets and other personal property included in the Assets.

(e) Except for any Permitted Encumbrances, the Real Property and the improvements located thereon do not encroach upon any easements, rights of way or the property of others and there are no encroachments onto the Real Property from the property of others. The Assets include all utility connections, and the right to use the same, necessary for the conduct of the Business in the ordinary course and said utilities are available under public rights of way or easements benefiting the Real Property. All of the Real Property has both physical and legal access to an open and publicly-dedicated road.

(f) The conduct of the Business by Seller in the ordinary course is not dependent upon the right to use the property of others, except under valid and binding lease agreements included among the Contracts, which lease agreements are listed on Schedule 6.8 hereto. Seller has quiet and peaceable possession of the property which is the subject of such lease agreements.

(g) All inventories of Seller are in good and merchantable condition, are turning and are usable and salable in the ordinary course of the Business, and the values at which such inventories are carried on Seller's books of account fairly represent the value thereof and reflect the normal inventory valuation policy of Seller. All fixed assets and other personal property included in the Assets is in good operating condition and repair (ordinary wear and tear excepted).

(h) The accounts receivable of the Business as shown on Seller's books and records have arisen in the ordinary course of business, represent valid and enforceable obligations owed to Seller and are recorded as trade accounts receivable on the books of Seller in accordance with GAAP.

#### 6.7 Intellectual Property.

(a) Schedule 6.7 hereto contains a complete and correct list of all registered and/or licensed Intellectual Property, as well as all other trademarks, service marks, trade names, and Internet domain names used in the operation of the Business. "Intellectual Property" means all rights in proprietary information and intellectual property, including all patents, patent applications, patent disclosures and patentable inventions; all trademarks, service marks, trade dress, trade names, and Internet domain names and corporate names, and similar designations of source or origin, including all common law marks and the goodwill symbolized by all the foregoing; all rights of publicity and privacy; all registered and unregistered copyrights; all registrations, applications and renewals for any of the foregoing; all licenses of rights in computer software, trademarks, patents, copyrights and other intellectual property; and all trade secrets, confidential information, business methodologies, ideas, know-how, processes and techniques, inventions, research and development information, plans, improvements, proposals, technical and computer data, documentation, financial, business and marketing plans, and client, customer and supplier lists and related information.

(b) Seller owns, or has the license or right to use, all Intellectual Property used, held by, or licensed to a Seller in the operation of the Business, and none

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of such Intellectual Property has expired, been abandoned or canceled. Seller is transferring to Buyer at Closing all of Seller's Intellectual Property that is currently or has in the past been used in the operating of the Business and/or that is otherwise related to the Business (other than those items specifically identified as Excluded Assets on Schedule 2.2).

(c) None of Seller's Intellectual Property is subject to any pending or threatened challenge or infringement. To the Knowledge of Seller, the operation of the Business as currently operated does not infringe the Intellectual Property of any Person. Seller has not received any written claim alleging that Seller is infringing the Intellectual Property of any Person.

(d) To the Knowledge of Seller, all Business IT Systems are in good working condition and are sufficient for the operation of the Business as currently conducted. To the Knowledge of Seller, in the past two (2) years, there has been no malfunction, failure, malware or phishing attack, continued substandard performance, denial-of-service or other cyber incident, including any cyberattack or other impairment of the Business IT Systems. Seller has taken commercially reasonable steps to safeguard the confidentiality, availability, security and integrity of the Business IT Systems, including implementing and maintaining appropriate backup, disaster recovery and software and hardware support arrangements.

(e) To the Knowledge of Seller, Seller has complied with all applicable laws and all internal or publicly posted policies, notices and statements concerning the collection, use, processing, storage, transfer and security of personal information in the conduct of the Business. To the Knowledge of Seller, in the past five (5) years, Seller has not (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any notice of any audit, investigation, complaint or other action by any governmental authority or other Person concerning Seller's collection, use, processing, storage, transfer or protection of personal information or actual, alleged or suspected violation of any applicable law concerning privacy, data security or data breach notification, in each case in connection with the conduct of the Business, and there are no facts or circumstances that could reasonably be expected to give rise to any such action.

#### 6.8 Contracts.

(a) Schedule 6.8 hereto lists all Contracts related to the operation of the Business to which Seller is a party or by which it or any of its assets or properties are bound, including leases of real or personal property (other than those Contracts specifically identified as Excluded Assets on Schedule 2.2). Accurate and correct copies of each such Contract has been delivered to Buyer.

(b) (i) Seller is not in default under or in breach of any Assumed Contract, and to the Knowledge of Seller, no other parties to any Assumed Contract is in default thereunder or in breach thereof; (ii) to the Knowledge of Seller, there are no facts or conditions that, if continued or noticed, would result in a default or breach by Seller or

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any other Person under any Assumed Contract; (iii) Seller has not received any notice that any Person intends to cancel, modify or terminate any Assumed Contract, and Seller has not given any notice of cancellation, modification or termination of any Assumed Contract; (iv) each Assumed Contract is in full force and effect and embodies the complete understanding between the parties thereto with respect to the subject matter thereof; (v) each Assumed Contract is a valid and binding agreement enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or affecting creditors' rights generally and to general equity principles (whether such enforceability is considered in a proceeding at law or in equity); and (vi) no consent or approval of any Person pursuant to any Assumed Contract is required for the consummation of the transactions contemplated herein except as set forth on Schedule 6.8 hereto or as have already been obtained.

(c) With the exception of this Agreement, neither Seller nor any Specified Shareholder or any of their respective affiliates has entered into any Contract or granted any option to sell or otherwise transfer, directly or indirectly, all or a significant part of the capital stock, equity ownership interests or assets of Seller.

#### 6.9 Taxes.

(a) Seller has timely filed with all appropriate governmental agencies all Tax or information returns and Tax reports required to be filed. All such returns and reports were correct and complete and were prepared in accordance with applicable laws and regulations; and all Taxes of Seller, and all interest, penalties, assessments or deficiencies claimed to be due by any such taxing authority with respect to the foregoing, regardless of whether reflected on such returns, have been fully paid.

(b) Seller has made adequate accruals for the payment of all Taxes payable in respect of the period subsequent to the last period for which such Taxes were paid, and, to the Knowledge of Seller, Seller has no liability for such Taxes in excess of the amounts so paid or accruals so made.

(c) Seller has complied with all applicable laws relating to the withholding of Taxes and has, within the time and within the manner prescribed by law, withheld and paid over to the proper taxing authorities all amounts required to be withheld and paid over under all applicable laws in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder and any other third party.

6.10 Books and Records. The books, records and accounts of Seller with respect to the Business (a) are accurate and complete, (b) have been maintained in accordance with good business practices on a basis consistent with prior years, (c) state in reasonable detail and accurately and fairly reflect the transactions and dispositions of any assets of Seller, and (d) accurately and fairly reflect the depreciation associated with the Assets.

**6.11 No Litigation.** To the Knowledge of Seller, there is no action, suit, claim or legal, administrative, arbitration, condemnation or other proceeding or governmental investigation or examination or any change in any zoning or building ordinance affecting any of the Assets, pending or, to the Knowledge of Seller, threatened or injunction or orders entered, pending or threatened against any Specified Shareholder, Seller or any business, properties or assets of Seller, at law or in equity, before or by any federal, state, municipal or other governmental department, court, commission, board, bureau, agency or instrumentality, domestic or foreign, to restrain or prohibit the consummation of the transactions contemplated hereby or which, if determined adversely, is reasonably likely (a) to result in an adverse effect on the Assets or the Business, or (b) to adversely affect the consummation of the transactions contemplated by this Agreement.

**6.12 Employees and Labor Matters.**

(a) Schedule 6.12 sets forth a list, as of the date hereof, of all salaried and hourly employees employed by Seller with respect to the Business and such employees' current compensation. There are no written or oral employment agreements, employment contracts or understandings relating to employment (other than ordinary course arrangements for "at-will" employment) to which Seller is a party with respect to the Business (other than those listed in Schedule 6.8 hereto).

(b) Seller is in compliance with all applicable laws relating to the employment of personnel and labor, including provisions thereof relating to wages and hours, sexual harassment and other hostile work environment issues, discrimination, equal opportunity, collective bargaining, plant closing and mass layoff, health and safety, immigration and the payment of employment and all other Taxes.

(c) Seller has not agreed to recognize any union or other collective bargaining representative with respect to the Business; and no union or other collective bargaining representative has been certified as the exclusive bargaining representative of any person employed by Seller with respect to the Business. There is no pending or threatened union organizational effort, labor dispute, strike, slowdown, lockout, boycott, sit-in, sick-out, union election, walkout, demonstration, leafleting, picketing, representation or certification campaign, or work stoppage relating to employees of Seller with respect to the Business and none has occurred within the immediately preceding three (3)-year period.

(d) There are no unresolved employment claims which have been filed as of the date hereof by any employee or former employee of Seller with respect to the Business that relate to arbitrations, unfair labor practice charges, employment discrimination charges, lawsuits, any employment-related tort claim or other claims or charges.

**6.13 Employee Benefit Plans.**

(a) Each Benefit Plan is identified on Schedule 6.13 hereto. Seller has made available to Buyer, an accurate and complete copy of each of the following, as

applicable, with respect to each Benefit Plan: (i) the plan document or agreement or, with respect to any Benefit Plan that is not in writing, a written description of the material terms thereof; (ii) the trust agreement, insurance contract or other documentation of any related funding arrangement; (iii) the summary plan description; (iv) the two most recent annual reports, actuarial reports and financial reports; (v) the most recent required IRS Form 5500, including all schedules thereto; and (vi) the most recent determination or opinion letter received from the IRS with respect to each Benefit Plan that is intended to be a "qualified plan" under Section 401 of the Code. Each Benefit Plan has been operated and administered by Seller in compliance with all applicable laws relating to employment or labor matters including ERISA and the Code. With respect to the Benefit Plans, individually and in the aggregate, (x) no event has occurred which would subject Seller to liability (except liability for benefits, claims and funding obligations payable in the ordinary course) under ERISA, the Code, or any other applicable statute, order or governmental rule or regulation, and (y) there has been no action, suit, grievance, arbitration or other claim with respect to the administration or investment of assets of the Benefit Plans (other than routine claims for benefits made in the ordinary course of plan administration) pending, or to the Knowledge of Seller, threatened.

(b) All contributions to and payments under any Benefit Plan required in respect of periods ending on or before the Closing Date have been made by Seller before the Closing Date.

(c) Each Benefit Plan that is intended to be a qualified plan under Section 401(a) of the Code, and each trust created thereunder, has been timely amended and restated as required by the IRS and either the applicable plan document for such qualified plan has received a favorable determination letter or, if the applicable plan document is a prototype or volume submitter plan, such plan can rely on a favorable opinion letter from the IRS, as to the qualification under the Code of such Benefit Plan and the tax exempt status of any related trust. No event has occurred or failed to occur that could reasonably be expected to adversely affect the qualification of such Benefit Plan or the tax exempt status of such related trust.

(d) No Benefit Plan is under audit or is the subject of an investigation by the IRS, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any other governmental entity, nor is any such audit or investigation pending or, to the Knowledge of Seller, threatened.

6.14 Business Names. Seller does not do business in any state or country under any name other than "Burklund Distributors, Inc."

6.15 Environmental.

(a) The operations of Seller with respect to the Business are in compliance with all applicable Environmental Laws, and to the Knowledge of Seller, no action or proceeding is pending or threatened to either challenge the compliance status or to allege a violation of Environmental Laws.

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(b) Seller's disposal practices with respect to Business as they relate to Hazardous Substances have been accomplished in accordance with all applicable Environmental Laws.

(c) To the Knowledge of Seller, there is not located at the Real Property any (i) underground storage tanks, (ii) landfill, (iii) surface impoundment, (iv) disposal area or facility, (v) asbestos-containing material, (vi) equipment containing polychlorinated biphenyls, or (vii) treatment or disposal area for Hazardous Substances.

(d) To the Knowledge of Seller, there has been no "release" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and related regulations) or threat of a "release" of any Hazardous Substances in violation of any applicable Environmental Law (i) on, at, from or affecting the Real Property or Assets, or (ii) to the Knowledge of Seller, in the vicinity of the Real Property which through soil, subsoil, bedrock, surface water or groundwater migration is reasonably likely to come to be located on or at the Real Property. "Release" has the meaning given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), and the regulations promulgated thereunder.

(e) Seller has provided to Buyer each environmental investigation, assessment, report, notice of violation (NOV), order, agency correspondence, administrative consent order (ACO), and other documentation relating to the environmental condition of the Real Property or Assets, or to any corresponding obligations, responsibilities or liabilities in connection with Environmental Laws, in each case, within the possession or control of Seller.

**6.16 Brokers and Finders.** Except as set forth on Schedule 6.16 hereto, no broker or finder has acted for Seller, any Specified Shareholder or any of their respective affiliates in connection with this Agreement and the transactions contemplated hereby; and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on any agreement, arrangement or understanding made by Seller, any Specified Shareholder or any of their respective affiliates.

## **ARTICLE 7. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as follows:

**7.1 Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has the requisite power and authority to own, operate and lease its assets and to conduct its business as and where its business is now conducted by it. Buyer is qualified to do business and is in good standing under the laws of the State of Illinois.

**7.2 Authority; Binding Effect.** Buyer has the right, power and authority to execute and deliver this Agreement and all other agreements contemplated hereby to be entered into by it, to perform its obligations hereunder and thereunder on its part to be performed and to consummate the transactions contemplated hereby and thereby. The execution and delivery by

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Buyer of this Agreement and all other agreements and documents contemplated hereby to be entered into by it and the performance by Buyer of its obligations hereunder and thereunder have been duly approved by all necessary action, and no further approvals are required by the officers, directors or shareholders of Buyer in connection therewith. This Agreement constitutes, and when duly executed and delivered, all other agreements contemplated hereby to be entered into by Buyer will constitute, the legal, valid and binding obligation of Buyer, enforceable against Buyer, in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally and to general equity principles (whether such enforceability is considered in a proceeding at law or in equity).

**7.3 No Creation of Violation, Default, Breach or Encumbrance.** The execution, delivery and performance of this Agreement by Buyer does not (a) violate (i) any statute, rule or regulation to which Buyer is subject or (ii) any order, writ, injunction, decree, judgment or ruling of any court, administrative agency or governmental body to which Buyer is subject; (b) conflict with or violate any provision of the Organizational Documents of Buyer; or (c) require the consent of any Person or result in the breach of or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any Contract to which Buyer is a party, which could adversely affect the ability of Buyer to consummate the transactions contemplated by this Agreement.

**7.4 No Adverse Action.** There is no action, suit, claim or legal, administrative, arbitration or other proceeding or investigation or examination pending or, to the Knowledge of Buyer, threatened against Buyer, and no injunction or orders entered against Buyer, at law or in equity, before or by any federal, state, municipal or other governmental department, court, commission, board, bureau, agency or instrumentality, domestic or foreign, to restrain or prohibit the consummation of the transactions contemplated hereby or which, if determined adversely, is reasonably likely to adversely affect the consummation of the transactions contemplated by this Agreement.

**7.5 Brokers and Finders.** No broker or finder has acted for Buyer or any of its affiliates in connection with this Agreement and the transactions contemplated hereby; and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on any agreement, arrangement or understanding made by Buyer or any of its affiliates.

## **ARTICLE 8. COVENANTS OF THE PARTIES**

**8.1 Further Assurances.** On and after the Closing Date, Seller shall execute and deliver or cause to be executed and delivered to Buyer such further instruments of transfer, assignment and conveyance and take such other action as Buyer may reasonably require to more effectively carry out the transfer of the Assets and the Business to Buyer and the consummation of the matters contemplated by this Agreement and to place Buyer in a legal position to be assured of the Assets and the Business that Buyer is acquiring under this Agreement.

8.2 Delivery of Assets. At the Closing, Seller shall deliver to Buyer the Assets, including all documents, paper and electronic files, computer disks, and other documents

in paper or electronic format related to the operation of the Business or the Assets, in each case, by making them available to Buyer at their present location.

8.3 Employee Matters.

(a) Offers of Employment. Unless otherwise agreed upon between Seller and Buyer, at the Closing, (i) Seller will terminate its employment of each employee of Seller, and (ii) Buyer will offer employment to each such employee.

(b) COBRA. Seller shall be solely responsible for any obligations under COBRA or other applicable law, with respect to employees of Seller (whether salary, hourly or otherwise) who are not employed by Buyer immediately upon Closing.

(c) Employment-Related Claims. Seller is and shall remain solely responsible for all liability, costs and expenses (including reasonable attorneys' fees) for all existing employment claims which have been filed by any employee or former employee of Seller, governmental authority or other Person prior to the Closing Date relating to Occupational Safety and Health Act requirements or other similar safety laws, arbitrations, unfair labor practice charges, employment discrimination charges, lawsuits, any employment-related tort claim or other claims or charges of or by employees of Seller, governmental authority or other Person or any thereof filed after the Closing Date but arising as a result of actions or events or series of actions or events which occurred prior to the Closing Date.

8.4 Transition of Benefit Plans.

(a) If and to the extent requested by Buyer, Seller shall amend or terminate any Benefit Plan; provided, however, any such amendment or termination shall comply with all applicable laws and shall not be required if otherwise prohibited by the terms of any applicable collective bargaining agreements. Any such amendment or termination may be made conditional upon Closing provided that such amendment or termination becomes effective immediately prior thereto.

(b) Prior to the Closing, Seller shall adopt any and all resolutions and take all other actions that are necessary or appropriate: (i) to fund each 401(k) Plan of Seller referenced on Schedule 6.13 (the "401(k) Plan") with any profit sharing and matching contributions that have accrued as of the Closing Date or that otherwise customarily and historically would have been made by Seller prior to the 401(k) Plan's year end; (ii) to require that all 401(k) Plan participant elective deferrals cease sufficiently in advance of the Closing Date to ensure that such elective deferrals are remitted to the 401(k) Plan prior to the Closing; (iii) except as set forth immediately above in (i) and (ii) of this paragraph, to cease

all other contributions to the 401(k) Plan as of the day immediately prior to the Closing Date; (iv) to terminate the 401(k) Plan; (v) to fully vest all participant account balances in the 401(k) Plan immediately prior to the Closing Date; (vi) if so directed by Buyer in writing, to resign as plan administrator of the 401(k) Plan; and (vii) if so directed by Buyer in writing, to secure the resignation of the current trustee of the 401(k) Plan. Buyer has the right, in Buyer's sole discretion and

upon written notice to Seller, to assume full responsibility (A) to amend the 401(k) Plan following the Closing Date in such manner as is necessary for the 401(k) Plan to be in compliance with all applicable laws as of the 401(k) Plan's termination date, and (B) in Buyer's sole discretion, to apply for and obtain a favorable determination letter from the IRS. If Buyer elects to exercise its right under the immediately preceding sentence, Buyer will (i) provide for distribution of the assets of the 401(k) Plan, which will be following the receipt of a favorable determination letter if such letter is applied for and (ii) either accept its appointment, or will appoint an unrelated corporation, to serve as successor plan trustee and successor plan administrator of the 401(k) Plan.

**8.5 Title Insurance; Real Property Investigation.**

(a) Within ten (10) days after the date hereof, Buyer will order (a) one or more current commitments from the Title Company setting forth the basis upon which the Title Company is willing to issue the Title Policy (collectively, the "Title Commitment"), together with legible copies of all documents creating exceptions to title or leasehold interest, as the case may be, to the Real Property included in the Assets (the "Exception Documents"), and (b) current ALTA/ACSM "as built" land surveys of each parcel of such Real Property (collectively, the "Survey"), in each case, prepared or furnished at Seller's sole cost and expense. If the Title Commitment or the Survey disclose any Liens, easements, restrictions, reservations or other defects or any other matters objectionable to Buyer, other than Permitted Encumbrances, Buyer will advise Seller of the same in writing within fifteen (15) days after Buyer's receipt of all of the Title Commitment, the Exception Documents and the Survey (prior to Closing). Matters not objected to by Buyer within said period shall be deemed to be additional Permitted Encumbrances. As to any matters to which Buyer timely objects, Seller shall remedy such matters as are susceptible of being remedied to Buyer's satisfaction and, within fifteen (15) days after Buyer gives Seller notice of objection to such matters, shall have delivered to Buyer a revised Title Commitment and/or Survey reflecting that such remedy has been effected. If Seller is unable to remedy such matters and deliver such revised Title Commitment and/or Survey in accordance with the foregoing requirements, Buyer shall have the option of (i) consummating the transaction contemplated hereby and accepting such title as Seller holds, without change in or to the terms hereof (unless such matters are encumbrances or liens for an ascertainable amount, in which case Seller shall pay the amount thereof to Buyer in cash at the Closing), or (ii) extending the Cut-Off Date to such date determined by Buyer in its sole discretion to provide Seller with additional time to remedy such matters.

(b) Buyer, together with its authorized agents, representatives, consultants, and engineers (collectively, the "Buyer Parties") shall have the right, at its sole cost and expense following the date hereof and prior to the Closing Date, to conduct or cause to be conducted any and all tests, inspections, reviews, assessments or evaluations of the Real Property, including without limitation engineering, topographic, soils, zoning, wetlands and environmental inspections (including Phase I and/or Phase II environmental site assessments to be performed by an environmental consultant selected by Buyer), and economic feasibility and financial availability analyses (collectively, the "Inspections"), as Buyer deems necessary, desirable or appropriate in order to determine whether the Real

Property is suitable for purchase by Buyer. Seller shall be entitled to have a representative present at all times during each inspection. Prior to the execution of this Agreement, Seller has provided to Buyer, at no cost to Buyer, all title, survey, engineering and environmental information and other such information about the Real Property which Seller may have in its possession. As used herein, the term "Phase I and/or Phase II environmental site assessments" includes Buyer's right to perform intrusive soil sampling/investigation to the land and improvements constituting the Real Property. Seller shall allow the Buyer Parties unlimited access to the Real Property and to other information pertaining thereto in the possession or within the control of Seller for the purpose of the Inspections.

(c) Buyer's satisfaction of itself of the matters set forth in this Section 8.5 and Section 8.6 shall be done for Buyer's own accounts and not as a representative or agent of Seller. Further, except as otherwise provided in this Section 8.5 and Section 8.6, Buyer shall forever fully protect, defend and hold Seller harmless from all reasonable losses, costs, damages, attorneys' fees and expenses of every kind and nature whatsoever which Seller may suffer, expend or incur and which arise out of, relate to, or are in any way connected with Buyer's due diligence activities under this Section 8.5 and Section 8.6. Buyer shall, within seven (7) days of recordation, pay and discharge of record or bond over any mechanic's and materialmen's liens which may arise out of, relate to, or are in any way connected with Buyer's due diligence activities.

**8.6 Access to Information.** Until the Closing, Seller will furnish Buyer, its shareholders, officers, employees, accountants, attorneys, representatives and agents, with all financial, operating, risk management, technical, environmental, ownership and other data and information concerning the Business and the Assets as Buyer may from time to time reasonably request and will accord Buyer or its authorized representatives access to the Assets and, to the extent relating to the Business, Seller's books, records, files, Contracts, Benefit Plans, properties and documents. Seller will give such persons the opportunity to ask questions of, and receive answers from, appropriate representatives of Seller with respect to the Business and the Assets. Buyer and its authorized representatives shall have the right to conduct environmental site assessments, audits and testing of the Real Property, to be performed at Buyer's cost by an environmental consultant selected by Buyer. Seller will provide reasonable cooperation and

assistance to Buyer in connection with obtaining an appraisal of all or any portion of the Assets in form and substance acceptable to Buyer's lender.

**8.7 Access to Books and Records.** From and after Closing, upon reasonable notice, Buyer shall provide Seller and its authorized representatives with reasonable access (for the purpose of examining and copying), during normal business hours, to the books and records of Seller with respect to periods or occurrences prior to or on the Closing; provided, however, that such access does not unreasonably interfere with the normal business operations of Buyer. After the signing of this Agreement, Seller shall (a) reasonably cooperate promptly with, and to use their commercially reasonable efforts to cause their authorized representatives to cooperate promptly with, Buyer and its authorized representatives in connection with the preparation of any financial statements (including audited financial statements) required by applicable rules and regulations of the Securities and Exchange Commission (the "Required Financial Statements") and to consider in good faith all of Buyer's reasonable comments in connection therewith, (b) reasonably assist promptly, and use their reasonable best efforts to cause their authorized

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representatives to assist promptly, Buyer and its authorized representatives in connection with the preparation of any filings, documents, or other materials, including any pro forma financial statements and the consent of any auditors to the filing of the audited Required Financial Statements, that may be required in connection with the transactions contemplated by this Agreement, or otherwise in connection with Buyer's reporting obligations under applicable federal securities laws, including all applicable requirements of Regulation S-X, and (c) reasonably supply promptly and further furnish promptly, and use their reasonable best efforts to cause their authorized representatives to supply and furnish promptly, any and all information, documents, and records as Buyer may reasonably request, and provide reasonable access to Seller's personnel and facilities, in connection with the matters contemplated by this Section 8.7.

**8.8 Public Information.** Except as may be required by law, until the Closing or termination of this Agreement, Seller and Buyer shall consult with each other with respect to the content of any communications to be made to employees, customers, suppliers and others having dealings with Seller. Seller and Buyer shall not make any public statements, including any press releases, with respect to this Agreement and the transactions contemplated hereby without the prior written consent of the other; provided, however, nothing contained herein shall prohibit Buyer or Seller, following notification to the other party and reasonable time for comment if practicable, from making any disclosure required by applicable law, judicial or administrative order or listing agreement with any national securities exchange or stock market.

**8.9 Actions Pending Closing.** Except as contemplated by this Agreement, from the date hereof to the Closing, Seller will not take, and will cause its directors, officers, employees and the Specified Shareholders not to take, any action that would result in a violation of any of the following requirements or proscriptions, unless the prior written consent of Buyer is obtained:

(a) The Business will be carried on diligently and in the usual, regular and ordinary manner and Seller will use its commercially reasonable efforts to preserve its present business organization intact, keep available the services of its present officers and employees and preserve its present relationships with Persons having business dealings with it and will not make or institute any methods of purchase, sale, lease, management, accounting or operation in or affecting the Business that is outside the ordinary course of business or inconsistent with past practices of the Business;

(b) Seller will not increase or decrease the compensation payable or to become payable to any employee of the Business, or make any change in any insurance, pension or other employee benefit plan nor pay any commission or bonus to any of such employees other than in the ordinary course of doing business;

(c) Seller will not make any change in its sales, credit or collection terms and conditions with respect to the Business other than in the ordinary course of doing business;

(d) Seller will not (i) subject to a Lien any portion of the Assets, (ii) sell, assign, transfer, lease or otherwise dispose of any portion of the Assets, except in the ordinary course of business consistent with past practice, or acquire any assets for the

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Business except in the ordinary course of business consistent with past practice; (iii) modify or change any Assumed Contract; or (iv) enter into any transaction, Contract or commitment that by reason of its size or otherwise is material to the Business or that is not in the ordinary course of the Business consistent with past practice;

(e) All of the Assets will be used, operated, maintained and repaired in a careful and efficient manner consistent with past practice;

(f) Seller will not do any act or omit to do any act, or permit any act or omission to act, that will cause a breach of any Assumed Contract;

(g) Seller will pay when due each of the following with respect to the Business: (i) all trade accounts payable; (ii) all payments required by any financing agreements, loan agreements or similar agreements; or (iii) Taxes of whatever kind or nature or payments related thereto (including estimated payments and withholding remittances) all in the ordinary course of doing business and consistent with past practice;

(h) Seller will, at its sole expense, remediate those safety matters relating to the Business identified on Schedule 8.9(h) to the reasonable satisfaction of Buyer;

(i) Seller will maintain its books, accounts and records with respect to the Business in the usual, regular and ordinary manner, on a basis consistent with past practice

and in a business-like manner in accordance with sound commercial practice, and will comply with any laws applicable to Seller with respect to the Business; and

(j) Seller will not enter into any transaction or make any agreement or commitment, and will take all such action or refrain from taking any action, and will not permit any event to occur, in each case which would result in any of its representations, warranties or covenants contained in this Agreement not being true and correct at and as of the Closing Date.

**8.10 Compliance.**

(a) Seller shall use commercially reasonable efforts (i) to cause all obligations imposed upon Seller in this Agreement to be duly complied with, and cause all conditions precedent to such obligations to be satisfied prior to the Cut-Off Date (as defined in Section 12.1(b)), and (ii) to obtain any and all consents, waivers, amendments, modifications, approvals, authorizations, notations and licenses necessary to the consummation by Seller of the transactions contemplated by this Agreement.

(b) Buyer shall use commercially reasonable efforts (i) to cause all obligations imposed upon Buyer in this Agreement to be duly complied with, and cause all conditions precedent to such obligations to be satisfied prior to the Cut-Off Date, and (ii) to obtain any and all consents, waivers, amendments, modifications, approvals, authorizations, notations and licenses necessary to the consummation by it of the transactions contemplated by this Agreement.

(c) Each party hereto shall immediately notify the other parties upon learning of the occurrence of any event or the failure of any event to occur that would result in a breach of any representation or warranty made by such party in this Agreement or a failure by such party to comply or be able to comply with any covenant, condition or agreement of such party contained in this Agreement.

**8.11 No Shop.** From the date hereof and until the first to occur of the Closing or the termination of this Agreement in accordance with Article 12, Seller will not, and Seller will direct and use its best efforts to cause each of its directors, officers, Shareholders and representatives to not, initiate, solicit, encourage or respond to, directly or indirectly, any inquiries or the making or implementation of any proposal or offer with respect to a transaction involving, or any purchase of all or any significant portion of the Assets or any equity securities of, Seller (any such proposal or offer being an "Acquisition Proposal") to, or engage in any activities or have any discussions or negotiations with, any Person relating to an Acquisition Proposal or otherwise facilitate any effort or attempt to make or implement an Acquisition Proposal. Seller will, and will direct and use its best efforts to cause each of its directors, officers, Shareholders and representatives to: (a) immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Persons conducted heretofore with respect to any of the foregoing, and each will take the steps

necessary to inform such Persons of the obligations undertaken in this Section 8.11; and (b) notify Buyer immediately if any such inquiries or proposals are received by, any such information is requested from, or any such discussions or negotiations are sought to be initiated or continued with, Seller or any Shareholder.

**8.12 Receivables and Other Payments.** From and for a period of twelve (12) months after the Closing, if Seller or any of its affiliates receive or collect any funds relating to any accounts receivable or any other Asset purchased hereunder, including, but not limited to, customer trade accounts payable, manufacturer/vendor/buying group rebates and/or program payments, or payments made by Buyer on behalf of Seller, Seller shall, or shall cause its affiliates to, promptly notify Buyer of such event and remit such funds to Buyer within five (5) Business Days after its receipt thereof. From and for a period of twelve (12) months after the Closing, if Buyer or any of its affiliates receive or collect any funds relating to any Excluded Asset, including, but not limited to, manufacturer/vendor/buying group rebates and/or program payments, or payments made by Seller on behalf of Buyer, Buyer shall, or shall cause its affiliate to, promptly notify Seller of such event and remit any such funds to Seller within five (5) Business Days after its receipt thereof. If Seller fails to timely make any payments to Buyer pursuant to this Section 8.12, Buyer may offset the amount of any such payments against the Promissory Note or against any amounts otherwise payable by Buyer to Seller under the Promissory Note. The exercise of such right of offset by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute a breach or violation of any provision of this Agreement or any agreements contemplated hereby (including, without limitation, the Promissory Note).

**8.13 Supplemental Information.** Seller agrees that, with respect to the representations and warranties of such party contained in this Agreement, such party will have the continuing obligation until the Closing to promptly provide Buyer with such additional supplemental information (collectively, the "Supplemental Information"), in the form of (a)

amendments to the then existing Schedules or (b) additional Schedules, as would be necessary, in light of the circumstances, conditions, events and states of fact then known to Seller, to make each of those representations and warranties true and correct as of the Closing. For purposes only of determining whether the conditions to the obligations of Buyer have been satisfied, the Schedules to this Agreement as of the Closing Date will be deemed to be the Schedules to this Agreement as of the date hereof as amended or supplemented by the Supplemental Information provided to Buyer prior to the Closing pursuant to this Section 8.13; provided, however, that (i) if the Supplemental Information discloses any circumstances, conditions, events and states of fact arising or existing on or prior to the date hereof that are necessary to make any of those representations and warranties true and correct as of the date hereof (and such circumstances, conditions, events or states of fact were not disclosed in the Schedules to this Agreement as of the date hereof), Buyer will be entitled to terminate this Agreement by notice to Seller, and (ii) if the Supplemental Information discloses any circumstances, conditions, events and states of fact first arising or existing after the date hereof which, in any combination thereof, (A) have had a Material Adverse Effect on the Business or Assets or, (B) in the sole judgment of Buyer are having or will

have a Material Adverse Effect on the Business or Assets, Buyer will be entitled to terminate this Agreement by notice to Seller.

#### **ARTICLE 9. CONDITIONS TO BUYER'S OBLIGATION TO CONSUMMATE THE TRANSACTION**

Each and every obligation of Buyer to be performed at or before the Closing hereunder is subject, at the Buyer's election, to the satisfaction on or prior to the Closing Date of the conditions set forth below.

**9.1    Compliance With Agreement.** Seller shall have performed all of its obligations and agreements and complied with all covenants, warranties and conditions contained in this Agreement which are required to be performed or complied with by Seller on or prior to the Closing Date.

**9.2    Representations and Warranties.** The representations and warranties of Seller contained in this Agreement shall be true, complete and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made or given on the Closing Date.

**9.3    Certificates.** Seller shall have delivered to Buyer a certificate, dated the Closing Date, signed by its duly authorized officers to the effect stated in Sections 9.1 and 9.2 hereof.

**9.4    Corporate Authorization.** Buyer shall have received a copy of (a) the Organizational Documents of Seller, as in effect on the Closing Date, (b) the resolutions of the directors and Shareholders of Seller, in form and substance reasonably satisfactory to Buyer, adopted by the directors and Shareholders by unanimous written consent, each certified as of the Closing Date by the secretary or assistant secretary thereof, duly authorizing the execution, delivery and performance by Seller of this Agreement and each other agreement and instrument contemplated hereby, together with an incumbency certificate as to the persons authorized to execute and deliver such documents and instruments on its behalf.

#### **9.5    Principal Closing Documents.**

**(a)    Seller shall have executed and delivered to Buyer such bills of sale, deeds, assignments, motor vehicle transfer of title documentation and other instruments of transfer and conveyance (in form and substance reasonably satisfactory to Buyer) as shall be necessary or desirable to vest in Buyer all the right, title and interest in and to the Assets, including:**

**(i)    A special warranty deed transferring to Buyer (or its designated affiliate) marketable fee simple title to the parcel(s) of Real Property included in the Assets and described on Schedule 2.1(a) hereto, which deed will be in form sufficient for the Title Company's issuance and delivery of the Title Policy and otherwise reasonably acceptable to Buyer;**

- (ii) A bill of sale in the form attached hereto as Exhibit B;
- (iii) An assignment and assumption agreement with respect to the Assumed Liabilities in the form attached hereto as Exhibit C (the "Assignment and Assumption Agreement");
- (iv) A trademark assignment in the form attached hereto as Exhibit D; and
- (v) A website content and domain assignment in the form attached hereto as Exhibit E.

(b) Seller and each Specified Shareholder shall have executed and delivered to Buyer the Noncompetition Agreement in the form attached hereto as Exhibit F.

(c) Each Specified Shareholder shall have executed and delivered to Buyer a consulting agreement in the forms attached hereto as Exhibit G (collectively, the "Consulting Agreements").

(d) Seller shall have delivered to Buyer evidence in form and substance reasonably satisfactory to Buyer that the matters set forth on Schedule 8.9(f) have been fully remediated to Buyer's reasonable satisfaction.

(e) Seller shall have executed and delivered to Buyer a non-foreign affidavit dated as of the Closing Date and in form and substance required under the Treasury Regulations issued pursuant to Section 1445(b) of the Code so that Buyer is exempt from withholding any portion of the Purchase Price thereunder.

9.6 Title Insurance. The Title Company shall have irrevocably and unconditionally committed to issue and deliver the Title Policy to Buyer (or its designated affiliate) upon payment of the premium therefor, which premium shall have been paid by Seller to the Title Company.

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9.7 Lien Release and Tax Clearance. Seller shall have obtained and delivered to Buyer:

- (a) Evidence reasonably satisfactory to Buyer of the satisfaction, payment and discharge by Seller of all current liabilities of the Business and liabilities under leases relating to the Lease Value;
- (b) Lien releases, including Form UCC-3 termination statements, necessary to remove and release all Liens against the Assets, in each case, in form and substance reasonably satisfactory to Buyer; and
- (c) Letters or certificates from the appropriate state agencies indicating that all sales, use and employment Taxes payable by Seller on or prior to the Closing Date have

been paid and that there is no Lien for unpaid sales, use or employment Taxes on the Assets

9.8 Third Party Consents.

(a) Buyer shall have received all third party consents (or in lieu thereof waivers) required to be obtained for the consummation of the transactions contemplated hereby, including all consents required with respect to the assignment of the Assumed Contracts to Buyer and any other consents set forth in Schedule 6.3 hereto.

(b) Buyer shall have received consents, executed by the respective landlords of the real property leased or subleased by Seller pursuant to any Assumed Contract, to the effect that as of the Closing Date such leases are not in default and are valid and continuing agreements and have not been modified or amended. Each said consent shall also state that the landlord approves of the assignment of such lease as part of this Agreement.

(c) Buyer shall have received consents, executed by the respective lessors of the equipment leased or subleased by Seller in the Business pursuant to any Assumed Contract, to the effect that as of the Closing Date such leases are not in default and are valid and continuing agreements and have not been modified or amended. Each said consent shall also state that the lessor approves of the assignment of such lease as part of this Agreement.

9.9 No Adverse Event. The Business and the Assets shall not be adversely affected or threatened to be affected in any way as a result of fire, explosion, hurricane, earthquake, disaster, accident or other casualty, strike or labor disturbance, any action or threatened action by the United States or any other governmental authority, flood, drought, embargo, pandemic, riot, civil disturbance, uprising, activity of armed forces, act of God or public enemy.

9.10 No Litigation. No party hereto shall be a party to or be threatened with any litigation or administrative proceeding relating to any of such parties or any of their assets or properties or to this Agreement or the transactions contemplated hereby which in the judgment of Buyer would affect the desirability of carrying out this Agreement.

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9.11 Lender Consent. Buyer's obligations to pay the Purchase Price and otherwise consummate the transactions contemplated hereby are fully conditioned upon Buyer's receipt of the consent of its lender and Buyer's receipt of appraisals of all or any portion of the Assets and delivery of all such other documents (including any legal opinions) in form and substance acceptable to Buyer's lender.

**ARTICLE 10. CONDITIONS TO OBLIGATIONS OF SELLER TO CONSUMMATE THE TRANSACTION**

Each and every obligation of Seller to be performed at or before the Closing hereunder is subject, at such party's election, to the satisfaction on or prior to the Closing Date of the conditions set forth below.

**10.1 Compliance With Agreement.** Buyer shall have performed all of its obligations and agreements and complied with all covenants, warranties and conditions contained in this Agreement which are required to be performed or complied with by Buyer on or prior to the Closing Date.

**10.2 Representations and Warranties.** The representations and warranties of Buyer contained in this Agreement shall be true, complete and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been given on the Closing Date.

**10.3 Certificate.** Buyer shall have delivered to Seller a certificate dated the Closing Date and signed by one of its duly authorized persons to the effect stated in Sections 10.1 and 10.2 hereof.

**10.4 Principal Closing Documents.**

(a) Buyer shall have executed and delivered to Seller the Promissory Note in the form attached hereto as Exhibit A.

(b) Buyer shall have executed and delivered to Seller the Assignment and Assumption Agreement in the form attached hereto as Exhibit C.

(c) Buyer shall have executed and delivered to Seller the Noncompetition Agreements in the form attached hereto as Exhibit E.

(d) Buyer shall have executed and delivered to each Specified Shareholder a Consulting Agreement in the forms attached hereto as Exhibit G.

**10.5 No Litigation.** No party hereto shall be a party to or be threatened with any litigation or administrative proceeding relating to any of such parties or any of their assets or properties or to this Agreement or the transactions contemplated hereby which in the judgment of Seller would affect the desirability of carrying out this Agreement.

## **ARTICLE 11. INDEMNIFICATION**

**11.1 Seller's Indemnity.** Subject to the provisions of this Article 11, from and after the Closing Date, Seller will indemnify and hold harmless Buyer and its directors, officers, agents, employees, representatives, successors and assigns, from and against any and all damage, loss, cost, obligation, claims, demands, assessments, judgments or liability (whether based on contract, tort, product liability, strict liability or otherwise), including Taxes, and all expenses (including interest, penalties and attorneys' and accountants' fees and disbursements) (collectively

"Damages") incurred in litigation or otherwise, and any investigation relating thereto, by any of the above-named Persons, directly or indirectly, resulting from or in connection with:

- (a) Any misrepresentation or breach of warranty made by Seller or any Specified Shareholder in this Agreement or in any other agreement, certificate, schedule, exhibit or writing delivered by Seller or any Specified Shareholder to Buyer pursuant to this Agreement;
- (b) Any breach or failure to perform any covenant or agreement made or undertaken by Seller or any Specified Shareholder in this Agreement or in any other agreement, certificate, schedule, exhibit or writing delivered by Seller or any Specified Shareholder to Buyer pursuant to this Agreement;
- (c) The Excluded Assets; and
- (d) The Retained Liabilities.

**11.2 Buyer's Indemnity.** Subject to the provisions of this Article 11, from and after the Closing Date, Buyer will indemnify and hold harmless Seller and its directors, officers, agents, employees, representatives, successors and assigns, from and against any and all Damages incurred by any of the above-named Persons, directly or indirectly, resulting from or in connection with:

- (a) Any misrepresentation or breach of warranty made by Buyer in this Agreement or in any other agreement, certificates, schedule, exhibit or writing delivered by Buyer to Seller pursuant to this Agreement;
- (b) Any breach or failure to perform any covenant or agreement made or undertaken by Buyer in this Agreement or in any other agreement, certificates, schedule, exhibit or writing delivered by Buyer to Seller pursuant to this Agreement; and
- (c) The Assumed Liabilities.

**11.3 Procedure.** All claims for indemnification by a party under this Article 11 (the party claiming indemnification and the party against whom such claims are asserted being hereinafter called the "Indemnified Party" and the "Indemnifying Party," respectively) shall be asserted and resolved as follows:

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- (a) If any claim or demand for which an Indemnifying Party would be liable to an Indemnified Party hereunder is asserted against or sought to be collected from such Indemnified Party by a third party, such Indemnified Party shall with reasonable promptness give notice (the "Claim Notice") to the Indemnifying Party of such claim or demand, specifying the nature of and specific basis for such claim or demand and the amount or the estimated amount thereof to the extent then feasible; provided, however, that the failure to so notify will not relieve the Indemnifying Party of its obligations hereunder except to the

extent that the Indemnifying Party is actually prejudiced thereby. The Indemnifying Party will have fifteen (15) days from the delivery or mailing of the Claim Notice (the "Notice Period") to notify the Indemnified Party (i) whether or not it disputes the liability of the Indemnifying Party to the Indemnified Party hereunder with respect to such claim or demand, and (ii) whether or not it desires, at the cost and expense of the Indemnifying Party, to defend the Indemnified Party against such claim or demand. If the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such claim or demand, the Indemnifying Party will have the right to control the defense against the claim by all appropriate proceedings and any settlement negotiations, provided that to the satisfaction of the Indemnified Party, the Indemnifying Party shall secure the Indemnified Party against such contested claims by posting a bond or otherwise. If the Indemnified Party desires to participate in, but not control, any such defense or settlement, it may do so at its sole cost and expense. If the Indemnifying Party fails to respond to the Indemnified Party within the Notice Period, elects not to defend the Indemnified Party, or after electing to defend fails to commence or reasonably pursue such defense, then the Indemnified Party shall have the right, but not the obligation, to undertake or continue the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter all on behalf, for the account and at the risk of the Indemnifying Party.

(b) If requested by the Indemnifying Party, the Indemnified Party agrees, at the Indemnifying Party's expense, to cooperate with the Indemnifying Party and its counsel in contesting any claim or demand which the Indemnifying Party elects to contest, or, if appropriate and related to the claim in question, in making any counterclaim against the Person asserting the third party claim or demand, or any cross-complaint against any Person. No claim as to which indemnification is sought under this Agreement may be settled without the consent of the Indemnifying Party.

(c) If any Indemnified Party should have a claim against the Indemnifying Party hereunder which does not involve a claim or demand being asserted against or sought to be collected from it by a third party, the Indemnified Party shall send a Claim Notice with respect to such claim to the Indemnifying Party. If the Indemnifying Party disputes such claim, such dispute shall be resolved by litigation in an appropriate court of competent jurisdiction.

11.4 **Costs.** If any legal action or other proceeding is brought for the enforcement or interpretation of any of the rights or provisions of this Agreement (including the indemnification provision), or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party

shall be entitled to recover reasonable attorneys' fees and all other costs and expenses incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

**11.5 Time Limitations.** No claim for indemnification pursuant to Section 11.1(a) or Section 11.2(a) may be initiated more than eighteen (18) months following the Closing Date; provided, however, that the limitations in this Section 11.5 shall not apply to any claim of fraud, willful misconduct or intentional breach of any representation or warranty contained in this Agreement.

**11.6 Limitations on Amount.** The aggregate Damages for which an Indemnifying Party will be obligated to indemnify an Indemnified Party under Section 11.1(a) or 11.2(a) shall not exceed (a) the Purchase Price in the case of claims relating to the Fundamental Reps or any claim of fraud, willful misconduct or intentional breach of any representation or warranty contained in this Agreement, and (b) One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) in the case of claims relating to any other representation or warranty contained in this Agreement. An Indemnifying Party shall have no liability for indemnification claims under Section 11.1(a) or 11.2(a) until the total of all Damages with respect to such claims exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00), at which point, the Indemnifying Party shall be obligated to indemnify the Indemnified Party for all such Damages from the first dollar, up to a maximum amount as set forth in this Section 11.6.

**11.7 Right to Offset.** Buyer may offset the indemnification obligations of Seller under this Article 11 against any amounts due or to become due to Seller under the Promissory Note, in addition to Buyer's other remedies. The exercise of such right of offset by Buyer in good faith, whether or not ultimately determined to be justified, will not constitute a breach or violation of any provision of this Agreement or any agreements contemplated hereby (including, without limitation, the Promissory Note).

**11.8 Exclusive Remedy.**

(a) Except in the case of fraud, gross negligence, bad faith or willful misconduct, each party's sole and exclusive remedy with respect to all claims relating to the subject matter of this Agreement will be pursuant to the indemnification provisions set forth in this Article 11; provided, however, that the indemnification provisions set forth in this Article 11 do not apply to claims made under, or arising out of, any other agreements entered into as of the Closing, which will be governed by the respective terms of such agreements.

(b) If Seller or any Shareholder makes any claim or institutes any actions, suits or proceedings with respect to the validity or applicability of this indemnification provision, Seller shall be responsible for all Damages incurred by Buyer in connection therewith. If Buyer makes any claim or institutes any actions, suits or proceedings with respect to the validity or applicability of this indemnification provision, Buyer shall be responsible for all Damages incurred by Seller in connection therewith.

## **ARTICLE 12. TERMINATION**

**12.1** Termination. This Agreement may be terminated at any time prior to the Closing:

(a) By agreement of Buyer and Seller;

(b) By either Buyer or Seller if the Closing has not taken place on or before April 30, 2024 (the "Cut-Off Date"); provided that the right to terminate this Agreement under this Section 12.1(b) shall not be available to (i) any party whose failure to fulfill any obligation under this Agreement has been the cause of, or results in, the failure of the Closing to occur within such period or (ii) Seller if Buyer has elected to exercise its rights to extend the Cut-Off Date in accordance with Section 8.5;

(c) By Buyer or Seller as otherwise expressly provided in this Agreement; and

(d) By Buyer or Seller, as the case may be, (i) if any of the conditions precedent to the performance of the obligations of the party giving notice of termination have not been fulfilled and cannot be fulfilled on or prior to the Closing and have not been waived in writing by such party, or (ii) if a default is made by the other party in observance or in the due and timely performance of any of the covenants and agreements herein contained that cannot be cured on or prior to the Closing and has not been waived in writing by the non-defaulting party; or (iii) if there exists a material inaccuracy, failure or breach of a warranty or representation set forth herein or in any other agreement or instrument executed pursuant hereto that has not been waived in writing by the party for whose benefit such warranty or representation was made or given.

**12.2** No Liability. Except in the event of a termination of this Agreement pursuant to Section 12.1(d) hereof, there shall be no liability on the parties hereto or any of their respective shareholders, officers, directors or affiliates as a result thereof under this Agreement. A termination under Section 12.1(d) hereof will not prejudice any claim for Damages that any party may have hereunder or in law or in equity as a consequence of any matter giving rise to a termination of the Agreement under Section 12.1(d) hereof. Either party shall have the right to specific performance if the Agreement is not otherwise terminated in accordance with the terms hereof.

**12.3** Notice. Buyer may exercise its right of termination of this Agreement only by delivering written notice to that effect to Seller, provided that such notice is received by Seller prior to the Closing. Seller may exercise its right of termination of this Agreement only by delivering written notice to that effect to Buyer, provided that such notice is received by Buyer prior to the Closing.

## **ARTICLE 13. MISCELLANEOUS**

**13.1** Expenses. Except as otherwise set forth herein, each party agrees to pay, without right of reimbursement from any other, the costs incurred by such party incident to the preparation and execution of this Agreement and performance of their respective obligations

hereunder, including the fees and disbursements of legal counsel, accountants and consultants employed by the respective parties in connection with the transactions contemplated by this Agreement.

**13.2 Survival.** All representations, warranties, covenants and agreements made by the parties each to the other in this Agreement or pursuant hereto in any certificate, instrument or document shall survive the consummation of the transactions contemplated by this Agreement, and may be fully and completely relied upon by Buyer and by Seller, as the case may be, notwithstanding any investigation heretofore or hereafter made by such party or on behalf of any of them, and shall not be deemed merged into any instruments or agreements delivered at Closing.

**13.3 Notices.** All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including email) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to Seller:

Burklund Distributors, Inc.  
Attn: Robert B. Hackett Sr.,  
President  
2500 N. Main Street, Suite 3  
East Peoria, IL 61611

If to Buyer:

AMCON Distributing Company  
7405 Irvington Road  
Omaha, NE 68122  
Attn: President

With a Copy to:

Davis & Campbell L.L.C.  
Attn: Jay H. Scholl  
401 Main Street, Suite 1600  
Peoria, IL 61602

or to such other address as any party may designate by notice complying with the terms of this Section 13.3. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery; (b) on the date of transmission with a sent confirmation if by email; and (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

**13.4 Parties in Interest and Assignment.**

(a) This Agreement is binding upon and is for the benefit of the parties hereto and their respective successors and permitted assigns. Except as provided in Article 11, nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties hereto or their respective successors and assigns any rights, remedies or obligations or liabilities under or by reason of this Agreement.

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(b) Except as provided in Section 13.4(c) hereof, neither this Agreement nor any of the rights or duties of any party hereto may be transferred or assigned to any Person except by a written agreement executed by all of the parties hereto.

(c) Notwithstanding the above, Buyer may transfer and assign all or any portion of its rights under this Agreement (i) to any affiliate of Buyer, or (ii) in connection with any merger, consolidation or conversion of Buyer, any sale of all or substantially all of the assets of Buyer or any sale of all or substantially all of the Assets acquired by Buyer under this Agreement.

**13.5 Modification.** This Agreement may not be amended or modified except by a writing signed by an authorized representative of the party against whom enforcement of the change is sought. No waiver of the performance or breach of, or default under, any condition or obligation hereof shall be deemed to be a waiver of any other performance, or breach of, or default under the same or any other condition or obligation of this Agreement.

**13.6 Waiver.** Each party hereto may, by written notice to the other party hereto: (a) extend the time for the performance of any of the obligations or other actions of such other party under this Agreement; (b) waive any inaccuracies in the representations or warranties of such other party contained in this Agreement or in any document delivered pursuant to this Agreement; (c) waive compliance by such other party with any of the conditions or covenants of the other contained in this Agreement; or (d) waive or modify performance of any of the obligations of such other party under this Agreement. Except as provided in the preceding sentence, no action taken by or on behalf of any party, including any investigation by or on behalf of such party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement.

**13.7 Entire Agreement.** This Agreement embodies the entire agreement between the parties hereto and there are no agreements, representations or warranties between the parties other than those set forth or provided herein. This Agreement supersedes and replaces all prior agreements and understandings between the parties with respect to such subject matter, including any confidentiality agreement (upon the Closing), letter of intent, memorandum of understanding or terms sheet.

**13.8 Execution in Multiple Originals.** This Agreement may be executed in multiple originals, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument. A signature of a party to this Agreement sent by facsimile or other electronic transmission will be deemed to constitute an original and fully effective signature of such party.

**13.9 Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and (c) the

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remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

**13.10 Governing Law.** This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Delaware, except the laws of that State that would render such choice of laws ineffective.

**13.11 Construction of Agreement.** In construing this Agreement, it is the intent of the parties that:

- (a) no consideration may be given to the captions of the articles, sections or subsections, or to the table of contents, all of which are inserted for convenience in locating the provisions of this Agreement and not as an aid in its construction;
- (b) no consideration may be given to the fact or presumption that one party had a greater or lesser hand in drafting this Agreement;
- (c) the word "includes" and its derivatives means "includes, but is not limited to," and corresponding derivative expressions;
- (d) masculine pronouns used in this Agreement shall be construed to include feminine and neuter pronouns, and the meanings of the defined terms are applicable to both the singular and plural forms thereof;
- (e) accounting terms not defined in this Agreement, and accounting terms partly defined to the extent not defined, have the respective meanings given to them under GAAP;
- (f) each exhibit and schedule to this Agreement is a part of this Agreement and references to the term "Agreement" are deemed to include each such exhibit and schedule to this Agreement except to the extent that the context indicates otherwise, but if there is any conflict or inconsistency between the main body of this Agreement and any exhibit or schedule, the provisions of the main body of this Agreement will prevail;
- (g) the words "this Agreement," "herein," "hereby," "hereunder," and words of similar import refer to this Agreement as a whole and not to any particular article, section, subsection or other subdivision, unless expressly so limited; and
- (h) the word "or" is disjunctive but not necessarily exclusive.

*[The remainder of this page intentionally has been left blank]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Asset Purchase Agreement on the date first above written.

**SELLER:**

**BURKLUND DISTRIBUTORS, INC.**

By: /s/ Jonathan D. Burkland

Name: Jonathan D. Burkland

Title: Chief Executive Officer

By: /s/ Robert B. Hackett Sr.

Name: Robert B. Hackett Sr.

Title: Assistant Secretary

**BUYER:**

**AMCON DISTRIBUTING COMPANY**

By: /s/ Andrew C. Plummer

Name: Andrew C. Plummer

Title: President

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Schedules:

Schedule 1.1	Lease Value
Schedule 2.1(a)	Real Property
Schedule 2.1(b)	Assumed Contracts
Schedule 2.1(f)	Prepaid Assets
Schedule 2.2	Excluded Assets
Schedule 3.3	Allocation of Purchase Price
Schedule 4.2(a)	Permitted Encumbrances
Schedule 6.3	Seller's Required Consents
Schedule 6.6(a)	Liens and Encumbrances

Schedule 6.6(d)	Fixed Assets and Personal Property
Schedule 6.7	Intellectual Property
Schedule 6.8	Contracts
Schedule 6.12	Employees
Schedule 6.13	Employee Benefit Plans
Schedule 6.16	Brokers and Finders
Schedule 8.9(h)	Remediated Matters

Exhibits:

Exhibit A	Form of Promissory Note
Exhibit B	Form of Bill of Sale
Exhibit C	Form of Assignment and Assumption Agreement
Exhibit D	Form of Trademark Assignment
Exhibit E	Form of Website Content and Domain Assignment
Exhibit F	Form of Noncompetition Agreement
Exhibit G	Forms of Consulting Agreement

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**Exhibit 31.1**

**CERTIFICATION**

I, Christopher H. Atayan, certify that:

1. I have reviewed this report on Form 10-Q of AMCON Distributing 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 registrants' fiscal fourth 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 the registrant's board of directors (or persons performing the equivalent functions):

- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **January 18, 2024** **April 18, 2024**

*/s/* Christopher H. Atayan

Christopher H. Atayan,  
Chief Executive Officer and Chairman

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**Exhibit 31.2**

**CERTIFICATION**

I, Charles J. Schmaderer, certify that:

1. I have reviewed this report on Form 10-Q of AMCON Distributing 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 registrants' fiscal fourth 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 the registrant's board of directors (or persons performing the equivalent functions):

- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **January 18, 2024** **April 18, 2024**

/s/ Charles J. Schmaderer

Charles J. Schmaderer,

Vice President, Chief Financial Officer and Secretary

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**Exhibit 32.1**

**CERTIFICATION**

**PURSUANT TO 18 U.S.C. SECTION 1350**

**AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q (the "Report") of AMCON Distributing Company (the "Company") for the fiscal quarter ended **December 31, 2023** **March 31, 2024**, I, Christopher H. Atayan, Chief Executive Officer and Principal Executive Officer of the Company, hereby certify that, to the best of my knowledge and belief:

1. the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **January 18, 2024** **April 18, 2024**

/s/ Christopher H. Atayan

Christopher H. Atayan

Title: Chief Executive Officer and Chairman

A signed original of this written statement required by Section 906 has been provided to AMCON Distributing Company and will be retained by AMCON Distributing Company and furnished to the Securities and Exchange Commission or its staff upon request.

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**Exhibit 32.2**

**CERTIFICATION**  
**PURSUANT TO 18 U.S.C. SECTION 1350**

**AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q (the "Report") of AMCON Distributing Company (the "Company") for the fiscal quarter ended **December 31, 2023** **March 31, 2024**, I, Charles J. Schmaderer, Vice President, Chief Financial Officer and Secretary of the Company, hereby certify that, to the best of my knowledge and belief:

1. the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **January 18, 2024** **April 18, 2024**

/s/ Charles J. Schmaderer

Charles J. Schmaderer

Title: Vice President, Chief Financial Officer and Secretary

A signed original of this written statement required by Section 906 has been provided to AMCON Distributing Company and will be retained by AMCON Distributing Company and furnished to the Securities and Exchange Commission or its staff

upon request.

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