

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): October 21, 2019



BellRing Brands, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-39093
(Commission
File Number)

83-4096323
(IRS Employer
Identification No.)

**2503 S. Hanley Road
St. Louis, Missouri 63144**
(Address, including Zip Code, of principal executive offices)

Registrant's telephone number, including area code: (314) 644-7600

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A common stock, par value \$0.01 per share	BRBR	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Item 1.01. Entry into a Material Definitive Agreement.

Closing of Initial Public Offering

On October 21, 2019, BellRing Brands, Inc. (the “Company”) closed its initial public offering (the “IPO”) of 39,428,571 shares of its Class A common stock, \$0.01 par value per share (the “Class A Common Stock”), which number of shares included the underwriters’ exercise in full of their option to purchase up to an additional 5,142,857 shares of Class A Common Stock, at an offering price of \$14.00 per share, pursuant to the Company’s registration statement on Form S-1 (File No. 333-233867) (as amended from time to time, and together with the Company’s related registration statement on Form S-1 (File No. 333-234237) filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the “Securities Act”), the “Registration Statement”). The Company received net proceeds from the IPO of approximately \$516.4 million, after deducting underwriting discounts and commissions and expenses of the offering, all of which were contributed to BellRing Brands, LLC, a Delaware limited liability company and subsidiary of the Company (“BellRing Brands, LLC”), in exchange for BellRing Brands, LLC units (as defined below), as further described in the Registration Statement.

In connection with the IPO, the Company entered into the following agreements (the “Formation Agreements”), forms of which were previously filed as exhibits to the Registration Statement:

- an Amended and Restated Limited Liability Company Agreement of BellRing Brands, LLC, dated October 21, 2019, by and among BellRing Brands, LLC, the Company and Post Holdings, Inc., a Missouri corporation (“Post”) (such agreement, the “Limited Liability Company Agreement”), that governs the operations of BellRing Brands, LLC and the rights and obligations of its members (which are, as of October 21, 2019, Post and the Company);
- an Employee Matters Agreement, dated October 21, 2019, by and among the Company, BellRing Brands, LLC and Post, which covers a wide range of compensation and benefits matters;
- an Investor Rights Agreement, dated October 21, 2019, between the Company and Post, that provides Post with certain demand, shelf and piggyback registration rights with respect to any shares of the Class A Common Stock and also provides Post with certain governance rights, depending on the percentage of the total voting power of the Company’s outstanding common stock held by Post;
- a Tax Matters Agreement, dated October 21, 2019, by and among the Company, BellRing Brands, LLC and Post, that governs the parties’ respective rights, responsibilities and obligations with respect to tax matters, including responsibility for taxes attributable to BellRing Brands, LLC and its subsidiaries, entitlement to refunds, allocation of tax attributes, preparation of tax returns, certain tax elections, control of tax contests and other matters;
- a Tax Receivable Agreement, dated October 21, 2019, by and among the Company, BellRing Brands, LLC and Post, under which the Company will be required to make cash payments to Post (or certain of its transferees or assignees) equal to 85% of the cash savings, if any, in federal, state or local income or franchise tax that the Company realizes (or is deemed to realize) under certain circumstances as described therein; and
- a Master Services Agreement, dated October 21, 2019, by and among the Company, BellRing Brands, LLC and Post, under which Post provides certain services to the Company following completion of the IPO, including, among others, assistance with certain legal, finance, internal audit, treasury, information technology support, insurance and tax matters, the use of office and/or data center space, payroll processing services and tax compliance services.

The terms of each of the Formation Agreements are substantially the same as the terms set forth in the forms of such respective agreements that were filed as exhibits to the Registration Statement and as previously described in the Registration Statement under the heading “Certain Relationships and Related Party Transactions—Post-Offering Relationship with Post,” which descriptions are each incorporated herein by reference. These descriptions are only summaries and do not purport to be complete and are qualified in their entirety by reference to the full text of the Formation Agreements, copies of which are attached hereto as Exhibit 10.1 through Exhibit 10.6 and are incorporated herein by reference.

Indemnification Agreements

In connection with the IPO, the Company also entered into Indemnification Agreements, each dated October 21, 2019 (the “Indemnification Agreements”), under which the Company is obligated to indemnify its directors and executive officers against certain liabilities that may arise because of their status or service as directors or executive officers. The individuals with whom the Company entered into Indemnification Agreements are Robert V. Vitale (Executive Chairman), Darcy Horn Davenport (President and Chief Executive Officer and Director), Elliot H. Stein, Jr. (Director), Thomas P. Erickson (Director), Jennifer Kuperman (Director), Paul A. Rode (Chief Financial Officer and Treasurer), Craig L. Rosenthal (Senior Vice President and General Counsel, Secretary), Douglas J. Cornille (Senior Vice President, Marketing of Premier

Nutrition), R. Lee Partin (Senior Vice President, Sales of Premier Nutrition) and Robin Singh (Senior Vice President, Operations of Premier Nutrition). Each of the Indemnification Agreements is substantially the same. The description of the Indemnification Agreements is only a summary and does not purport to be complete and is qualified in its entirety by reference to the full text of the Form of Indemnification Agreement, a copy of which is attached hereto as Exhibit 10.7 and is incorporated herein by reference.

Assumption of Bridge Loan

On October 21, 2019 and in connection with the completion of the IPO, BellRing Brands, LLC entered into a Borrower Assignment and Assumption Agreement with Post and Morgan Stanley Senior Funding, Inc., as administrative agent (the "Assignment and Assumption Agreement"), under which BellRing Brands, LLC became the borrower under a \$1,225.0 million Bridge Facility Agreement, dated October 11, 2019, by and among Post, as borrower, certain subsidiaries of Post, as guarantors, each lender from time to time party thereto, Morgan Stanley Senior Funding, Inc., as administrative agent, and Morgan Stanley Senior Funding, Inc., BofA Securities, Inc., Citigroup Global Markets Inc., Credit Suisse Loan Funding LLC, Goldman Sachs Bank USA and JPMorgan Chase Bank, N.A., as joint lead arrangers and joint physical bookrunners (the "Post Bridge Loan"). Pursuant to the Assignment and Assumption Agreement, Post and its subsidiaries (other than BellRing Brands, LLC and certain of its subsidiaries) have no further material obligations under the Post Bridge Loan. The domestic subsidiaries of BellRing Brands, LLC continued to guarantee the Post Bridge Loan and BellRing Brands, LLC's obligations under the Post Bridge Loan became secured by a first priority security interest in substantially all of the assets of BellRing Brands, LLC and in substantially all of the assets of its subsidiary guarantors. Post retained the net cash proceeds of the Post Bridge Loan.

The foregoing summary of the Assignment and Assumption Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Assignment and Assumption Agreement, a copy of which is attached hereto as Exhibit 10.8 and is incorporated herein by reference.

Credit Agreement

On October 21, 2019, BellRing Brands, LLC entered into a Credit Agreement (the "Credit Agreement") by and among BellRing Brands, LLC, the institutions from time to time party thereto as lenders (the "Lenders"), Credit Suisse Loan Funding LLC, BofA Securities, Inc., Morgan Stanley Senior Funding, Inc., Barclays Bank PLC, Citibank, N.A., Goldman Sachs Bank USA and JPMorgan Chase Bank, N.A., as joint lead arrangers and joint bookrunners, and BMO Capital Markets Corp., Coöperatieve Rabobank U.A., New York Branch, Nomura Securities International, Inc., Suntrust Robinson Humphrey, Inc., UBS Securities LLC and Wells Fargo Securities, LLC, as co-managers, and Credit Suisse AG, Cayman Islands Branch, as administrative agent for the Lenders (in such capacity, the "Agent").

The Credit Agreement provides for a term B loan facility in an aggregate principal amount of \$700.0 million (the "Term B Facility"), and a revolving credit facility in an aggregate principal amount of \$200.0 million (the "Revolving Credit Facility"; and together with the Term B Facility, the "Loans"), with the commitments under the Revolving Credit Facility to be made available to BellRing Brands, LLC in U.S. Dollars, Euros and Pounds Sterling. Letters of credit are available under the Credit Agreement in an aggregate amount of up to \$20.0 million. The outstanding amounts under the Revolving Credit Facility and Term B Facility must be repaid on or before October 21, 2024.

On October 21, 2019, BellRing Brands, LLC borrowed the full amount under the Term B Facility and \$100.0 million under the Revolving Credit Facility and used the proceeds, together with the net proceeds of the IPO that were contributed to it by the Company, (i) to repay in full the balance of the Post Bridge Loan and all interest thereunder, (ii) to pay directly, or reimburse Post for, as applicable, all fees and expenses incurred by BellRing Brands, LLC or Post in connection with the IPO and the formation transactions described in the Registration Statement (the "Formation Transactions"), (iii) to reimburse Post for the amount of cash on BellRing Brands, LLC's balance sheet immediately prior to the completion of the IPO and (iv) to the extent there were any remaining proceeds, for general corporate and working capital purposes.

Borrowings under the Term B Facility bear interest, at the option of BellRing Brands, LLC, at an annual rate equal to either (a) the Eurodollar rate or (b) the base rate determined by reference to the highest of (i) the prime rate, (ii) the federal funds rate plus 0.50% per annum and (iii) the one-month Eurodollar rate plus 1.00% per annum, in each case plus an applicable margin of 5.00% for Eurodollar rate-based loans and 4.00% for base rate-based loans. The Term B Facility requires scheduled amortization payments of \$8,750,000, payable quarterly (commencing on March 31, 2020), with the balance to be paid at maturity on October 21, 2024. The Term B Facility contains customary mandatory prepayment provisions, including provisions for mandatory prepayment (a) from the net cash proceeds of certain asset sales and (b) beginning with the fiscal year ending September 30, 2020, of 75% of annual excess cash flow (which percentage will be reduced to 50% if the secured net leverage ratio (as defined in the Credit Agreement) is below a specified level as of a fiscal year end). The Term B Facility may be optionally prepaid at 101% of the principal amount prepaid at any time during the first 12 months following the closing of the Term B Facility, and without premium or penalty thereafter.

Borrowings under the Revolving Credit Facility bear interest, at the option of BellRing Brands, LLC, at an annual rate equal to either the Eurodollar rate or the base rate (determined as described above) plus a margin, which initially will be 4.25% for Eurodollar rate-based loans and 3.25% for base rate-based loans, and thereafter, will be determined by reference to the secured net leverage ratio, with the applicable margin for Eurodollar rate loans and base rate loans being (i) 4.25% and 3.25%, respectively, if the secured net leverage ratio is greater than or equal to 3.50:1.00, (ii) 4.00% and 3.00%, respectively, if the secured net leverage ratio is less than 3.50:1.00 and greater than or equal to 2.50:1.00 or (iii) 3.75% and 2.75%, respectively, if the secured net leverage ratio is less than 2.50:1.00. Facility fees on the daily unused amount of commitments under the Revolving Credit Facility will initially accrue at the rate of 0.50%, and thereafter, depending on BellRing Brands, LLC's secured net leverage ratio, will accrue at rates ranging from 0.25% to 0.50%.

The Credit Agreement provides for potential incremental revolving and term facilities at the request of BellRing Brands, LLC and at the discretion of the Lenders or other persons providing such incremental facilities, in each case on terms to be determined, and also permits BellRing Brands, LLC to incur other secured or unsecured debt, in all cases subject to conditions and limitations on the amount as specified in the Credit Agreement.

The Credit Agreement contains customary affirmative and negative covenants for agreements of this type, including: delivery of financial and other information; compliance with laws; maintenance of property, existence, insurance and books and records; maintenance of public ratings; inspection rights; obligation to provide collateral and guarantees by certain new subsidiaries; delivery of environmental reports; participation in an annual meeting with the Agent and the Lenders; further assurances; and limitations with respect to indebtedness, liens, fundamental changes, restrictive agreements, use of proceeds, amendments of organization documents, prepayments and amendments of certain indebtedness, dispositions of assets, acquisitions and other investments, sale leaseback transactions, changes in the nature of business, transactions with affiliates and dividends and redemptions or repurchases of stock.

The Credit Agreement also contains a financial covenant requiring BellRing Brands, LLC to maintain a total net leverage ratio (as defined in the Credit Agreement) not to exceed 6.00 to 1.00, measured as of the last day of each fiscal quarter, beginning with the fiscal quarter ending March 31, 2020.

The Credit Agreement provides for customary events of default, including material breach of representations and warranties, failure to make required payments, failure to comply with certain agreements or covenants, failure to pay or default under certain other material indebtedness, certain events of bankruptcy and insolvency, inability to pay debts, the occurrence of one or more unstayed or undischarged judgments in excess of \$65.0 million, attachments issued against all or any material part of BellRing Brands, LLC's property, certain ERISA events, a change in control, the invalidity of any loan document and the failure of the collateral documents to create a valid and perfected first priority lien. Upon the occurrence and during the continuance of an event of default, the maturity of the loans under the Credit Agreement may accelerate and the Agent and Lenders under the Credit Agreement may exercise other rights and remedies available at law or under the loan documents, including with respect to the collateral and guarantees of BellRing Brands, LLC's obligations under the Credit Agreement.

BellRing Brands, LLC's obligations under the Credit Agreement are unconditionally guaranteed by its existing and subsequently acquired or organized direct and indirect domestic subsidiaries (other than immaterial domestic subsidiaries and certain excluded subsidiaries) and are secured by security interests in substantially all of BellRing Brands, LLC's assets and the assets of its subsidiary guarantors, but excluding, in each case, real property.

The foregoing summary of the Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Credit Agreement, a copy of which is attached hereto as Exhibit 10.9 and is incorporated herein by reference.

Representations and warranties contained in the Formation Agreements, the Indemnification Agreements, the Assignment and Assumption Agreement and the Credit Agreement were made only for purposes of each such agreement and as of the dates specified therein; were solely for the benefit of the parties to each such agreement; and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors should not rely on the representations and warranties or any description thereof as characterizations of the actual state of facts or condition of the Company and its subsidiaries or Post and its subsidiaries. Moreover, information concerning the subject matter of the representations and warranties may change after the date of such agreements, which subsequent information may or may not be fully reflected in public disclosures by the Company.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth above in Item 1.01 under the headings "Assumption of Bridge Loan" and "Credit Agreement" is hereby incorporated into this Item 2.03 by reference.

Item 3.02. Unregistered Sales of Equity Securities.

On October 21, 2019, in connection with the completion of the IPO, the filing of the Company's Certificate of Incorporation (as defined below) and BellRing Brands, LLC's, the Company's and Post's entry into the Limited Liability Company Agreement, (a) the Company issued one share of Class B common stock of the Company, par value \$0.01 per share (the "Class B Common Stock"), to Post, in exchange for the 1,000 shares of common stock of the Company initially issued to Post in connection with the Company's incorporation, which shares were cancelled as part of the exchange, and (b) BellRing Brands, LLC issued 39,428,571 of its non-voting common units ("BellRing Brands, LLC units") to the Company and 97,474,180 BellRing Brands, LLC units to Post.

Under the Limited Liability Company Agreement, Post may from time to time redeem BellRing Brands, LLC units for, at BellRing Brands, LLC's option (as determined by its board of managers), (i) shares of Class A Common Stock or (ii) cash (based on the market price of the shares of Class A Common Stock). The redemption of BellRing Brands, LLC units for shares of Class A Common Stock will be at an initial redemption rate of one share of Class A Common Stock for one BellRing Brands, LLC unit, subject to customary redemption rate adjustments for stock splits, stock dividends and reclassifications.

The issuance of the Class B Common Stock and the issuance of the BellRing Brands, LLC units described in this Item 3.02 were made in reliance on Section 4(a)(2) of the Securities Act.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Effective October 21, 2019, Darcy Horn Davenport and Elliot H. Stein, Jr. were appointed to the Board of Directors of the Company as Class I directors for terms expiring at the Company's 2020 annual meeting of stockholders, and Thomas P. Erickson and Jennifer Kuperman were appointed to the Board of Directors of the Company as Class II directors for terms expiring at the Company's 2021 annual meeting of stockholders. Robert V. Vitale, the Company's executive chairman, was designated a Class III director with a term expiring at the Company's 2022 annual meeting of stockholders. Mr. Stein, Mr. Erickson and Ms. Kuperman were all determined to qualify as "independent" under New York Stock Exchange corporate governance standards and were appointed to serve as members of the Audit Committee of the Board of Directors and as members of the Corporate Governance and Compensation Committee of the Board of Directors. Mr. Stein and Mr. Erickson, along with Mr. Vitale, were appointed to serve as members of the Executive Committee of the Board of Directors. Biographical information regarding these directors and a description of the material terms of the directors' annual compensation have previously been described by the Company in the Registration Statement under the heading "Management," and such biographical information and terms are incorporated herein by reference.

The information set forth in Item 1.01 above under the heading "Indemnification Agreements" is hereby incorporated into this Item 5.02 by reference.

Item 5.03. Amendments to Certificate of Incorporation or Bylaws; Change in Fiscal Year.

Amended and Restated Certificate of Incorporation

Effective October 21, 2019, the Company amended and restated its certificate of incorporation (as so amended and restated, the "Certificate of Incorporation"). Among other things, the Certificate of Incorporation provides that:

- the Company's authorized capital stock consists of 500,000,000 shares of Class A Common Stock, one share of Class B Common Stock and 50,000,000 shares of preferred stock, par value \$0.01 per share;
- (i) holders of the Company's Class A Common Stock are entitled to one vote for each share held on all matters submitted to stockholders for their vote or approval, (ii) for so long as Post or its affiliates (other than the Company and its subsidiaries) directly own more than 50% of the BellRing Brands, LLC units, the aggregate voting power of the share of the Company's Class B Common Stock represents 67% of the combined voting power of the common stock of the Company, and (iii) if Post and its affiliates (other than the Company and its subsidiaries) hold 50% or less of the BellRing Brands, LLC units, the holder of the share of Class B Common Stock is entitled to a number of votes equal to the number of BellRing Brands, LLC units held by all persons other than the Company, subject to certain conditions described in the fifth bullet point below;
- the holders of the Class A Common Stock are entitled to receive dividends when, as and if declared by the Company's Board of Directors out of legally available funds and that the holder of the Class B Common Stock does not have any right to receive dividends;

- upon the Company’s liquidation or dissolution, the holders of the Class A Common Stock are entitled to share ratably in assets legally available for distribution to stockholders, subject to the prior rights of any holders of preferred stock then outstanding, and that, other than its par value, the holder of the Class B Common Stock does not have any right to receive a distribution upon a liquidation or dissolution of the Company;
- the share of the Class B Common Stock may not be transferred by Post except to an affiliate of Post (other than the Company and its subsidiaries); provided that Post may grant one or more proxies to, or enter into one or more voting agreements or other voting arrangements with, any persons other than the Company and its subsidiaries or Post’s affiliates to whom Post or any of its affiliates (other than the Company and its subsidiaries) transfers BellRing Brands, LLC units pursuant to the Limited Liability Company Agreement, and Post may transfer the share of Class B Common Stock in connection with any distribution of its ownership interests in BellRing Brands, LLC by means of a spin-off or split-off to its shareholders; and
- as permitted under the General Corporation Law of the State of Delaware, Post and its affiliates may carry on and conduct any business of any kind, nature or description, whether or not such business is competitive with or in the same or similar lines of business as the Company; that Post and its affiliates may do business with any of the Company’s customers, vendors and lessors; and that Post and its affiliates may make investments in any kind of property in which the Company may make investments.

The Certificate of Incorporation is the same as the form that was filed as an exhibit to the Registration Statement and as previously described in the Registration Statement under the heading “Description of Capital Stock,” which description is incorporated herein by reference. The descriptions set forth herein and in the Registration Statement do not purport to be complete and are qualified in their entirety by reference to the full text of the Certificate of Incorporation, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Amended and Restated Bylaws

On October 21, 2019, the Company amended and restated its bylaws (as amended and restated, the “Bylaws”). Among other things, the Bylaws:

- established procedures relating to the presentation of stockholder proposals at stockholder meetings;
- established procedures relating to the nomination of directors; and
- conformed certain provisions in light of the amended provisions of the Certificate of Incorporation.

The Bylaws are the same as the form that was filed as an exhibit to the Registration Statement and as previously described in the Registration Statement under the heading “Description of Capital Stock,” which description is incorporated herein by reference. The descriptions set forth herein and in the Registration Statement do not purport to be complete and are qualified in their entirety by reference to the full text of the Bylaws, a copy of which is attached hereto as Exhibit 3.2 and is incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

In a press release dated October 21, 2019, the Company and Post announced the closing of the IPO. The press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The information contained in this Item 7.01 and the accompanying Exhibit 99.1 attached hereto shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that Section, nor shall it be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except as expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	<u>Amended and Restated Certificate of Incorporation of BellRing Brands, Inc.</u>
3.2	<u>Amended and Restated Bylaws of BellRing Brands, Inc.</u>
10.1	<u>Amended and Restated Limited Liability Company Agreement of BellRing Brands, LLC, dated October 21, 2019, by and among BellRing Brands, LLC, BellRing Brands, Inc. and Post Holdings, Inc.</u>
10.2	<u>Employee Matters Agreement, dated October 21, 2019, by and among BellRing Brands, Inc., BellRing Brands, LLC and Post Holdings, Inc.</u>
10.3	<u>Investor Rights Agreement, dated October 21, 2019, between BellRing Brands, Inc. and Post Holdings, Inc.</u>
10.4	<u>Tax Matters Agreement, dated October 21, 2019, by and among BellRing Brands, Inc., BellRing Brands, LLC and Post Holdings, Inc.</u>
10.5	<u>Tax Receivable Agreement, dated October 21, 2019, by and among BellRing Brands, Inc., BellRing Brands, LLC and Post Holdings, Inc.</u>
10.6	<u>Master Services Agreement, dated October 21, 2019, by and among BellRing Brands, Inc., BellRing Brands, LLC and Post Holdings, Inc.</u>
10.7	<u>Form of Indemnification Agreement.</u>
10.8	<u>Borrower Assignment and Assumption Agreement, dated as of October 21, 2019, by and among Post Holdings, Inc., BellRing Brands, LLC and Morgan Stanley Senior Funding, Inc., as administrative agent.</u>
10.9	<u>Credit Agreement, dated as of October 21, 2019, by and among BellRing Brands, LLC, the institutions from time to time party thereto as lenders, Credit Suisse Loan Funding LLC, BofA Securities, Inc., Morgan Stanley Senior Funding, Inc., Barclays Bank PLC, Citibank, N.A., Goldman Sachs Bank USA and JPMorgan Chase Bank, N.A., as joint lead arrangers and joint bookrunners, and BMO Capital Markets Corp., Coöperatieve Rabobank U.A., New York Branch, Nomura Securities International, Inc., Suntrust Robinson Humphrey, Inc., UBS Securities LLC and Wells Fargo Securities, LLC, as co-managers, and Credit Suisse AG, Cayman Islands Branch, as administrative agent.</u>
99.1	<u>Press Release, dated October 21, 2019.</u>

SIGNATURES

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

Date: October 21, 2019

BellRing Brands, Inc.
(Registrant)

By: /s/ Craig L. Rosenthal

Name: Craig L. Rosenthal

Title: Senior Vice President and General Counsel, Secretary

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

of

BELLRING BRANDS, INC.

(Pursuant to Sections 242 and 245 of
the General Corporation Law of the State of Delaware)

BellRing Brands, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

FIRST: The name of the Corporation is BellRing Brands, Inc. The date of filing of its original certificate of incorporation (the "Original Certificate of Incorporation") with the Secretary of State of the State of Delaware was March 20, 2019.

SECOND: This Amended and Restated Certificate of Incorporation (this "Amended Certificate of Incorporation") has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware (as from time to time in effect, the "General Corporation Law") and by the written consent of the holder of all of the outstanding stock entitled to vote thereon in accordance with the provisions of Section 228 of the General Corporation Law.

THIRD: This Amended Certificate of Incorporation amends and restates in its entirety the Original Certificate of Incorporation of the Corporation to read as follows, effective as of 12:01 a.m. October 21, 2019:

1. Name. The name of the Corporation is BellRing Brands, Inc.
2. Address; Registered Office and Agent. The address of the Corporation's registered office is Corporation Service Company, 251 Little Falls Drive in the City of Wilmington, County of New Castle, Delaware 19808; and the name of its registered agent at such address is Corporation Service Company.
3. Purposes. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.
4. Number of Shares.
 - 4.1. The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is Five Hundred Fifty Million One (550,000,001) shares, consisting of: (i) Five Hundred Million One (500,000,001) shares of common stock, divided into (a) Five Hundred Million (500,000,000) shares of Class A common stock, with the par value of \$0.01 per share (the "Class A Common Stock"), and (b) one (1) share of Class B common stock, with the par value of \$0.01 per share (the "Class B Common Stock" and, together with the Class A Common Stock, the "Common Stock"); and (ii) Fifty Million (50,000,000) shares of preferred stock, with the par value of \$0.01 per share (the "Preferred Stock").
 - 4.2. Upon the effectiveness of this Amended Certificate of Incorporation, the 1,000 shares of common stock of the Corporation issued on March 20, 2019 shall automatically be converted into one (1) share of Class B Common Stock.

4.3. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, the number of authorized shares of any class of the Common Stock or the Preferred Stock may be increased or decreased, in each case by the affirmative vote of the holders of a majority of the total voting power of all of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law, and no vote of the holders of any class of the Common Stock or the Preferred Stock voting separately as a class shall be required therefor. Notwithstanding the immediately preceding sentence, the number of authorized shares of any particular class may not be decreased below the number of shares of such class then outstanding, plus, in the case of Class A Common Stock, the number of shares of Class A Common Stock issuable in connection with (1) the redemption of all outstanding Nonvoting Common Units (as defined in Section 14) pursuant to Article IX of the LLC Agreement (as defined in Section 14) and (2) the exercise of outstanding options, warrants, exchange rights, conversion rights or similar rights for Class A Common Stock.

5. Classes of Shares. The designation, relative rights, preferences and limitations of the shares of each class of capital stock are as follows:

5.1. Common Stock.

(i) Voting Rights.

(1) So long as Post holds in the aggregate more than 50% of the Nonvoting Common Units, then (i) each holder of Class A Common Stock shall be entitled, with respect to each share of Class A Common Stock held by such holder on the applicable record date, to one vote, in person or by proxy, on all matters on which stockholders generally are entitled to vote (whether at a meeting of stockholders or by written consent, and whether voting separately as a class or otherwise), and (ii) the holder of the share of Class B Common Stock shall be entitled, with respect to such share of Class B Common Stock held by such holder on the applicable record date, to a number of votes, in person or by one or more proxies, on all matters on which stockholders generally are entitled to vote (whether at a meeting of stockholders or by written consent, and whether voting separately as a class or otherwise) equal to 67% of the combined voting power of the outstanding shares of Common Stock (for purposes of illustration, if 20,000,000 shares of Class A Common Stock are outstanding on the applicable record date, then the share of Class B Common Stock would be entitled to 40,606,060 votes, or 67% of the combined voting power of the outstanding shares of Common Stock).

(2) In the event that, as of the record date for any meeting at which stockholders are entitled to vote, Post holds in the aggregate 50% or less of the Nonvoting Common Units outstanding as of such record date, then (i) each holder of Class A Common Stock shall be entitled, with respect to each share of Class A Common Stock held by such holder on the applicable record date, to one (1) vote, in person or by proxy, on all matters on which stockholders generally are entitled to vote (whether voting separately as a class or otherwise), and (ii) the holder of the share of Class B Common Stock shall be entitled, with respect to such share of Class B Common Stock held by such holder on the applicable record date, to a number of votes, in person or by one or more proxies, on all matters on which stockholders generally are entitled to vote (whether voting separately as a class or otherwise) equal to the number of Nonvoting Common Units held by all Persons other than the Corporation and its subsidiaries; provided that, of such votes, (a) the holder of the share of Class B Common Stock shall only be entitled to cast a number of such votes on its own behalf, in person or by one or more proxies, and in its sole discretion equal to the number of Nonvoting Common Units held by Post on the applicable record date, and (b) in the event that, on the applicable record date, any of the Nonvoting Common Units are held by Persons other than the Corporation or any of its subsidiaries or Post (each such Person, a "Non-Affiliated

BellRing Brands, LLC Member”), then the holder of the share of Class B Common Stock shall cast the remainder of the votes to which the outstanding share of Class B Common Stock shall be entitled only in accordance with instructions and directions from the Non-Affiliated BellRing Brands, LLC Member(s) in accordance with the proxy(ies) granted to, or the voting agreement(s) or other voting arrangement(s) entered into with, the Non-Affiliated BellRing Brands, LLC Member(s) pursuant to Section 8.04 of the LLC Agreement (for purposes of illustration, if 100,000,000 Nonvoting Common Units are outstanding on the applicable record date, the Corporation and its subsidiaries hold 20,000,000 Nonvoting Common Units and Post holds 50,000,000 Nonvoting Common Units, then the share of Class B Common Stock would be entitled to 80,000,000 votes, with 30,000,000 of such votes to be cast as directed by the Non-Affiliated BellRing Brands, LLC Member(s)).

(3) The holders of the outstanding shares of Class A Common Stock and Class B Common Stock shall each be entitled to vote separately upon any amendment to this Amended Certificate of Incorporation (including by merger, consolidation, reorganization or similar event) that would alter or change the powers, preferences or special rights of the shares of such class of Common Stock in a manner that affects them adversely.

(4) Except as otherwise required in this Amended Certificate of Incorporation or by applicable law, the holders of Common Stock shall vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with the holders of Preferred Stock).

(ii) Dividends; Stock Splits or Combinations.

(1) Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of capital stock having a preference senior to or the right to participate with the Class A Common Stock with respect to the payment of dividends, dividends of cash or property may be declared and paid on the Class A Common Stock out of the assets of the Corporation that are by law available therefor, at the times and in the amounts as the board of directors of the Corporation (the “Board”) in its discretion may determine.

(2) Dividends of cash or property may not be declared or paid on the Class B Common Stock.

(3) In no event shall any stock dividend, stock split, reverse stock split, combination of stock, reclassification or recapitalization be declared or made on the Class A Common Stock (each, a “Stock Adjustment”) unless the Stock Adjustment has been reflected in the same economically equivalent manner on all Nonvoting Common Units. Stock dividends with respect to the Class A Common Stock may only be paid with shares of Class A Common Stock.

(iii) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock are entitled, if any, the holders of all outstanding shares of Common Stock shall be entitled to receive, *pari passu*, an amount per share equal to the par value thereof, and thereafter the holders of all outstanding shares of Class A Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares of

Class A Common Stock held by each holder. Without limiting the rights of the holder of Class B Common Stock to redeem its Nonvoting Common Units for shares of Class A Common Stock in accordance with Article IX of the LLC Agreement (or for the consideration payable in respect of shares of Class A Common Stock in such voluntary or involuntary liquidation, dissolution or winding up), the holder of the share of Class B Common Stock, as such, shall not be entitled to receive, with respect to such share, any assets of the Corporation in excess of the par value thereof in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(iv) Restrictions on Class B Common Stock. The share of Class B Common Stock may not be owned or held by or transferred to any Person other than Post; provided, however, that Post, as the holder of the share of Class B Common Stock, shall be permitted to (a) grant one or more proxies to, or enter into one or more voting agreements or other voting arrangements with, any Non-Affiliated BellRing Brands, LLC Members pursuant to Section 8.04 of the LLC Agreement (and, for avoidance of doubt, (1) each such proxy, agreement or arrangement shall cover a specific number or percentage of votes to which the share of Class B Common Stock is entitled under this Amended Certificate of Incorporation, and (2) the holder(s) of such proxy(ies), agreement(s) or arrangement(s) may in its (their) discretion direct the holder of the Class B Common Stock as to the manner in which the votes covered by such proxy(ies), agreement(s) or arrangement(s) are to be cast (or not cast, as the case may be) and the holder of the Class B Common Stock shall so cast such votes as so directed by such holder(s), it being understood that some of the votes to which the share of Class B Common Stock is entitled may be voted in favor of, and others may be voted against, the particular matter upon which the holder of the Class B Common Stock is entitled to vote) and (b) transfer the share of Class B Common Stock in connection with any distribution of its ownership interest in BellRing Brands, LLC (as defined in Section 14) by means of a spin-off or split-off to its shareholders. Any stock certificate representing the share of Class B Common Stock shall include a legend referencing the restrictions described above.

(v) Taxes. The issuance of shares of Class A Common Stock upon the exercise by a holder of Nonvoting Common Units of its right to redeem its Nonvoting Common Units for shares of Class A Common Stock in accordance with Article IX of the LLC Agreement shall be made without charge to such holder for any transfer taxes, stamp taxes or duties or other similar tax in respect of the issuance; provided, however, that if any such shares of Class A Common Stock are to be issued in a name other than that of the then record holder of the Nonvoting Common Units being redeemed (or The Depository Trust Company or its nominee for the account of a participant of The Depository Trust Company that shall hold the shares for the account of such holder), then such holder and/or the Person in whose name such shares are to be delivered shall pay to the Corporation the amount of any tax that may be payable in respect of any transfer involved in the issuance or shall establish to the reasonable satisfaction of the Corporation that the tax has been paid or is not payable.

5.2. Preferred Stock. Shares of Preferred Stock may be issued from time to time in one or more series of any number of shares, provided that the aggregate number of shares issued and not retired of any and all such series shall not exceed the total number of shares of Preferred Stock hereinabove authorized, and with such powers, including voting powers, if any, and the designations, preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, all as shall hereafter be stated and expressed in the resolution or resolutions providing for the designation and issue of such shares of Preferred Stock from time to time adopted by the Board pursuant to authority so to do which is hereby expressly vested in the Board. The powers, including voting powers, if any, preferences and relative, participating, optional and other special

rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. Each series of shares of Preferred Stock: (i) may have such voting rights or powers, full or limited, if any; (ii) may be subject to redemption at such time or times and at such prices, if any; (iii) may be entitled to receive dividends (which may be cumulative or non-cumulative) at such rate or rates, on such conditions and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or series of capital stock, if any; (iv) may have such rights upon the voluntary or involuntary liquidation, winding up or dissolution of, upon any distribution of the assets of, or in the event of any merger, sale or consolidation of, the Corporation, if any; (v) may be made convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of capital stock of the Corporation (or any other securities of the Corporation or any other Person) at such price or prices or at such rates of exchange and with such adjustments, if any; (vi) may be entitled to the benefit of a sinking fund to be applied to the purchase or redemption of shares of such series in such amount or amounts, if any; (vii) may be entitled to the benefit of conditions and restrictions upon the creation of indebtedness of the Corporation or any subsidiary, upon the issue of any additional shares (including additional shares of such series or of any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by the Corporation or any subsidiary of, any outstanding shares of the Corporation, if any; (viii) may be subject to restrictions on transfer or registration of transfer, or on the amount of shares that may be owned by any Person or group of Persons; and (ix) may have such other relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof, if any; all as shall be stated in said resolution or resolutions of the Board providing for the designation and issue of such shares of Preferred Stock.

6. Stockholder Matters.

6.1. Actions by Written Consent. From and after the Triggering Event, any action required by the General Corporation Law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be effected only at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. Prior to the Triggering Event, any action required by the General Corporation Law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of capital stock of the Corporation having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted; provided, however, that, unless otherwise provided in any certificate of designation relating to a series of Preferred Stock, any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of Preferred Stock. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given by the Corporation to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

6.2. Election of Directors by Written Ballot. Unless and except to the extent that the Amended and Restated Bylaws of the Corporation (as such Bylaws may be amended from time to time, the "Bylaws") shall so require, the election of the directors of the Corporation need not be by written ballot.

7. Directors.

7.1. Number and Classification. The number of directors shall be fixed by, or in the manner provided in, the Bylaws, but shall not be less than five nor more than twelve members. The directors shall be divided into three classes, as nearly equal in number as reasonably possible, except that one class may be one greater or one less in number than the other two classes. At each annual meeting of stockholders, successors to the class of directors whose term expires at that annual meeting shall be elected for a three year term (and until their respective successors shall have been elected and qualified in each class or until their earlier death, resignation or removal), so that the term of one class of directors shall expire in each year. With respect to directors in office on October 21, 2019, the first class of directors shall hold office until the first annual meeting of stockholders following the date shares of capital stock of the Corporation are first publicly traded (the "IPO Date"), the second class of directors shall hold office until the second annual meeting of stockholders following the IPO Date, and the third class of directors shall hold office until the third annual meeting of stockholders following the IPO Date. The Board of Directors is authorized to assign members of the Board of Directors already in office to their respective class. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of capital stock of the Corporation, other than shares of Common Stock, shall have the right, voting separately by class or series, to elect directors, the election, term of office, filling of vacancies and other features of such directorship shall be governed by the terms of this Amended Certificate of Incorporation or any certificate of designation thereunder applicable thereto. As used in this Amended Certificate of Incorporation, the term "entire Board" means the total number of directors fixed by, or in accordance with, this Amended Certificate of Incorporation and the Bylaws.

7.2. Removal of Directors. Subject to the rights, if any, of the holders of any class or series of capital stock of the Corporation (other than the Common Stock) then outstanding, at a meeting called expressly for that purpose or by the written consent of stockholders as provided in Section 6.1, one or more members of the Board may be removed with or without cause by the affirmative vote of not less than a majority of the voting power of all of the outstanding shares of capital stock then entitled to vote in the election of directors, voting together as a single class. Whenever the holders of the shares of any class or series are entitled to elect one or more directors, the provisions of this Section 7.2 shall apply in respect of the removal of a director or directors so elected without cause, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the holders of the outstanding shares as a whole.

7.3. Vacancies. Subject to the rights, if any, of the holders of any class or series of capital stock of the Corporation (other than the Common Stock) then outstanding and the rights of Post Holdings, Inc. and its successors and assigns under the Investor Rights Agreement (as defined in Section 14) (so long as such agreement is in effect), any vacancies in the Board which occur for any reason prior to the expiration of the term of office of the class in which the vacancy occurs, including vacancies which occur by reason of an increase in the number of directors, may be filled (i) by the Board, acting by the affirmative vote of a majority of the remaining directors then in office (even if less than a quorum), or by a sole remaining director, (ii) at a special meeting of stockholders of the Corporation called for such purpose, or (iii) prior to the Triggering Event, by written consent of one or more stockholders of the Corporation as provided in Section 6.1, in each case until the next election of directors by the stockholders of the Corporation at which such class is elected.

7.4. Amendment. Whenever the holders of shares of any class or series of capital stock of the Corporation (other than the Common Stock) are entitled to elect one or more directors, any amendment, alteration, change or repeal of this Section 7 also shall require the affirmative vote of not less than a majority of the outstanding shares of each such class or series of capital stock of the Corporation entitled to vote on such directors.

8. Business Combinations.

8.1. Section 203 of the General Corporation Law. The Corporation shall not be subject to the provisions of Section 203 of the General Corporation Law.

8.2. Limitations on Business Combinations. Notwithstanding Section 8.1, the Corporation shall not, at any point in time at which the Class A Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act (as defined in Section 14) (or if the Class A Common Stock is no longer so registered as a result of action taken, directly or indirectly, by an Interested Stockholder (as defined in Section 8.3(iv)) or as a result of a transaction in which a person becomes an Interested Stockholder), engage in any Business Combination (as defined in Section 8.3(ii)) with any Interested Stockholder for a period of three years following the time that such stockholder became an Interested Stockholder, unless:

(i) prior to such time, the Board approved either the Business Combination or the transaction which resulted in the stockholder becoming an Interested Stockholder, or

(ii) upon consummation of the transaction which resulted in the stockholder becoming an Interested Stockholder, the Interested Stockholder owned at least 85% of the Voting Stock (as defined in Section 8.3(viii)) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the Voting Stock outstanding (but not the outstanding Voting Stock owned by the Interested Stockholder) those shares owned by (1) Persons who are directors and also officers of the Corporation or (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

(iii) at or subsequent to such time, the Business Combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds (2/3) of the outstanding Voting Stock of the Corporation which is not owned by the Interested Stockholder.

8.3. Definitions. In addition to the terms defined in Section 14, for purposes of this Section 8:

(i) "Associate," when used to indicate a relationship with any Person, means: (1) any corporation, partnership, unincorporated association or other entity of which such Person is a director, officer, manager or partner or is, directly or indirectly, the Owner of 20% or more of any class of Voting Stock; (2) any trust or other estate in which such Person has at least a 20% beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; and (3) any relative or spouse of such Person, or any relative of such spouse, who has the same residence as such Person.

(ii) “Business Combination,” when used in reference to the Corporation and any Interested Stockholder, means:

(1) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (a) with the Interested Stockholder, or (b) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the Interested Stockholder and as a result of such merger or consolidation Section 8.2 is not applicable to the surviving entity;

(2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the Interested Stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all of the assets of the Corporation determined on a consolidated basis or the aggregate market value of all of the outstanding Stock of the Corporation;

(3) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any Stock of the Corporation or of such subsidiary to the Interested Stockholder, except: (a) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into Stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the Interested Stockholder became such; (b) pursuant to a merger under Section 251(g) of the General Corporation Law; (c) pursuant to a dividend or distribution paid or made on, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into, Stock of the Corporation or any such subsidiary which security is distributed pro rata to all holders of a class or series of Stock of the Corporation subsequent to the time the Interested Stockholder became such; (d) pursuant to an exchange offer by the Corporation to purchase Stock made on the same terms to all holders of said Stock; or (e) any issuance or transfer of Stock by the Corporation; provided, however, that in no case under items (c)-(e) of this subsection (3) shall there be an increase in the Interested Stockholder’s proportionate share of the Stock of any class or series of the Corporation or of the Voting Stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(4) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the Stock of any class or series, or securities convertible into the Stock of any class or series, of the Corporation or of any such subsidiary which is Owned by the Interested Stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of Stock not caused, directly or indirectly, by the Interested Stockholder; or

(5) any receipt by the Interested Stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges or other financial benefits (other than those expressly permitted in subsections (1)-(4) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(iii) “Control,” including the terms “Controlling,” “Controlled by” and “under common Control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Voting Stock, by contract or otherwise. A Person who is the Owner of 20% or more of the outstanding Voting

Stock of a corporation, partnership, unincorporated association or other entity shall be presumed to have Control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of Control shall not apply where such Person holds Voting Stock, in good faith and not for the purpose of circumventing this Section 8, as an agent, bank, broker, nominee, custodian or trustee for one or more Owners who do not individually or as a group have Control of such entity. The definition of Control and correlated terms set forth in Section 14 shall not apply for purposes of this Section 8.

(iv) “Interested Stockholder” means any Person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (1) is the Owner of 15% or more of the outstanding Voting Stock of the Corporation, or (2) is an Affiliate or Associate of the Corporation and was the Owner of 15% or more of the outstanding Voting Stock of the Corporation at any time within the three year period immediately prior to the date on which it is sought to be determined whether such Person is an Interested Stockholder, and the Affiliates and Associates of such Person; provided, however, that the term “Interested Stockholder” shall not include (a) Post (as defined in Section 14) or Post Transferees, or any Affiliates of any such Post Transferees, (b) any Person whose ownership of Stock in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; provided that such Person specified in this clause (b) shall be an Interested Stockholder if thereafter such Person acquires additional shares of Voting Stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such Person; or (c) any Person whose ownership of Stock in excess of the 15% limitation set forth herein is the result of any action taken inadvertently; provided that such Person specified in this clause (c) (1) as soon as practicable divests itself of ownership of sufficient shares so that the Person ceases to otherwise be an Interested Stockholder, and (2) would not, at any time within the three year period immediately prior to a Business Combination between the Corporation and such Person, have been an Interested Stockholder but for the inadvertent acquisition of ownership. For the purpose of determining whether a Person is an Interested Stockholder, the Voting Stock of the Corporation deemed to be outstanding shall include Stock deemed to be owned by the Person through application of the definition of “Owner” below but shall not include any other unissued Stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(v) “Owner,” including the terms “Own” and “Owned,” when used with respect to any Stock, means a Person that individually or with or through any of its Affiliates or Associates:

(1) beneficially owns such Stock, directly or indirectly; or

(2) has (a) the right to acquire such Stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a Person shall not be deemed the Owner of Stock tendered pursuant to a tender or exchange offer made by such Person or any of such Person’s Affiliates or Associates until such tendered Stock is accepted for purchase or exchange; or (b) the right to vote such Stock pursuant to any agreement, arrangement or understanding; provided, however, that a Person shall not be deemed the Owner of any Stock because of such Person’s right to vote such Stock if the agreement, arrangement or understanding to vote such Stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more Persons; or

(3) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (b) of subsection (2) above), or disposing of such Stock with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, such Stock.

(vi) “Post Transferee” means any Person who (a) acquires Voting Stock of the Corporation from Post (other than in connection with a public offering) or (b) is granted a proxy by, or enters into a voting agreement or other voting arrangement with, Post pursuant to Section 8.04 of the LLC Agreement, and in either case is designated in writing by Post as a “Post Transferee.” For avoidance of doubt, a Person described in clause (b) of the preceding sentence who shall have been designated in writing by Post as a Post Transferee shall continue to be a Post Transferee in the event such Person acquires shares of Class A Common Stock through the exercise of its right to redeem the Nonvoting Common Units, which were the subject of such proxy, agreement or other arrangement, in accordance with Article IX of the LLC Agreement.

(vii) “Stock” means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(viii) “Voting Stock” means Stock of any class or series entitled to vote generally in the election of directors (or such equivalent office with the power to direct or cause the direction of the management and policies of a Person). Every reference in this Section 8 to a percentage of Voting Stock shall refer to such percentage of the votes of such Voting Stock.

9. Corporate Opportunities.

9.1. Competition and Corporate Opportunities.

(i) Subject to any express agreement that may from time to time be in effect, to the fullest extent permitted by law, Post may, and shall have no duty not to, (a) carry on and conduct, whether directly or indirectly, including, but not limited to, as a partner in any partnership or member, manager or owner of any limited liability company or other type of entity, as a joint venturer in any joint venture, as an officer, director or stockholder of any corporation or as a participant in any syndicate, pool, trust or association, any business of any kind, nature or description, whether or not such business is competitive with or in the same or similar lines of business as the Corporation or any of its Controlled Companies (as defined in Section 14), (b) do business with any client, customer, vendor or lessor of the Corporation or any of its Controlled Companies and (c) make investments in any kind of property in which the Corporation or any of its Controlled Companies may make investments, and no Dual Role Person (as defined in Section 14) shall, to the fullest extent permitted by law, be deemed to have breached his, her or its fiduciary duties, if any, to the Corporation solely by reason of Post’s engaging in any such activity.

(ii) To the fullest extent permitted by Section 122(17) of the General Corporation Law, the Corporation hereby renounces any interest or expectancy of the Corporation or any of its Controlled Companies to participate in any business of Post, and waives any claim against each Dual Role Person, and shall indemnify each Dual Role Person against any claim, that such Dual Role Person is liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of such Dual Role Person’s participation in any such business. The Corporation shall pay in advance any expenses incurred in defense of any such claim against any Dual Role Person pursuant to Section 10 or as provided in the Bylaws.

(iii) To the fullest extent permitted by Section 122(17) of the General Corporation Law, the Corporation hereby renounces any interest or expectancy of the Corporation or any of its Controlled Companies in any potential transaction or matter which may constitute a corporate opportunity for both (a) Post and (b) the Corporation or any of its Controlled Companies, and waives any claim against each Dual Role Person, and shall indemnify each Dual Role Person against any claim, that such Dual Role Person is liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of the fact that such Dual Role Person (a) pursues or acquires any corporate opportunity for the account of Post, (b) directs, recommends or otherwise transfers such corporate opportunity to Post or (c) does not offer or communicate information regarding such corporate opportunity to the Corporation or any of its Controlled Companies because such Dual Role Person has directed or intends to direct such opportunity to Post; provided, however, in each case, that any corporate opportunity which is expressly offered to a Dual Role Person solely in his or her capacity as a director, officer, manager, employee or agent of the Corporation or any of its Controlled Companies, as reasonably determined by such Dual Role Person, shall belong to the Corporation. The Corporation shall pay in advance any expenses incurred in defense of any such claim pursuant to Section 10 or as provided in the Bylaws.

(iv) The foregoing provisions in this Section 9.1, and the action of any Dual Role Person taken in accordance with, or in reliance upon, the foregoing provisions in this Section 9.1, including entering into or performing any agreement, transaction or arrangement, are, to the fullest extent permitted by law, deemed and presumed to be fair to the Corporation.

9.2. Certain Matters Deemed not Corporate Opportunities. In addition to and notwithstanding the foregoing provisions of this Section 9, the Corporation renounces any interest or expectancy of the Corporation or any of its Controlled Companies in, or in being offered an opportunity to participate in, any business opportunity pursued by or at the direction of Post that the Corporation is not financially able, contractually permitted or legally able to undertake. Moreover, nothing in this Section 9 shall amend or modify in any respect any written contractual agreement between Post, on the one hand, and the Corporation or any of its Controlled Companies, on the other hand.

9.3. Deemed Notice. Any Person purchasing or otherwise acquiring or obtaining any interest in any capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Section 9.

9.4. Severability. The invalidity or unenforceability of any particular provision, or part of any provision, of this Section 9 shall not affect the other provisions or parts hereof, and this Section 9 shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

9.5. Amendment; Terminations.

(i) The provisions of this Section 9 shall have no further force or effect at such time as (1) the Corporation and Post are no longer Affiliates of one another and (2) none of the directors, officers, employees, agents and/or Affiliates of Post serve as directors, officers, managers, employees and/or agents of the Corporation or any of its Controlled Companies.

(ii) No amendment, alteration, change, repeal or termination of this Section 9, nor the adoption of a provision inconsistent with this Section 9, shall eliminate or reduce the effect of such provisions with respect to (1) any matter occurring, or any action or proceeding accruing or arising, prior to such amendment, alteration, change, repeal, termination or adoption of an inconsistent provision or (2) any agreement, arrangement or other understanding between the Corporation and/or a Controlled Company, on the one hand, and Post, on the other hand, that was entered into prior to such amendment, alteration, change, repeal, termination or adoption of an inconsistent provision or any transaction entered into in the performance of such agreement, arrangement or other understanding, whether entered into before or after such time.

10. Indemnification.

10.1. Actions Involving Directors and Officers. The Corporation shall indemnify each person (other than a party plaintiff suing on his or her behalf or in the right of the Corporation) who at any time is serving or has served as a director or officer of the Corporation against any claim, liability or expense incurred as a result of such service, any other service on behalf of the Corporation or any service at the request of the Corporation as a director, officer, manager, employee, member or agent of another corporation, partnership, joint venture, trust or other enterprise (whether incorporated or unincorporated, for-profit or not-for-profit), to the maximum extent permitted by law. Without limiting the generality of the foregoing, the Corporation shall indemnify any such person who was or is a party (other than a party plaintiff suing on his or her behalf or in the right of the Corporation), or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, but not limited to, an action by or in the right of the Corporation) by reason of such service, against expenses (including, without limitation, attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding.

10.2. Actions Involving Employees or Agents.

(i) Permissive Indemnification. The Corporation may, if it deems appropriate and as may be permitted by this Section 10, indemnify any person (other than a party plaintiff suing on his or her own behalf or in the right of the Corporation) who at any time is serving or has served as an employee or agent of the Corporation against any claim, liability or expense incurred as a result of such service, any other service on behalf of the Corporation or any service at the request of the Corporation as a director, officer, manager, employee, member or agent of another corporation, partnership, joint venture, trust or other enterprise (whether incorporated or unincorporated, for-profit or not-for-profit), to the maximum extent permitted by law or to such lesser extent as the Corporation, in its discretion, may deem appropriate. Without limiting the generality of the foregoing, the Corporation may indemnify any such person who was or is a party (other than a party plaintiff suing on his or her own behalf or in the right of the Corporation), or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, but not limited to, an action by or in the right of the Corporation) by reason of such service, against expenses (including, without limitation, attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding.

(ii) Mandatory Indemnification. To the extent that an employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.2(i), or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by him or her in connection with the action, suit or proceeding.

10.3. Determination of Right to Indemnification in Certain Circumstances. Any indemnification required under Section 10.1 or authorized by the Corporation in a specific case or otherwise required pursuant to Section 10.2 shall be made by the Corporation, unless a determination is made reasonably and promptly that indemnification of the director, officer, employee or agent is not proper under the circumstances. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or even if obtainable, by independent legal counsel in a written opinion or (3) by majority vote of the stockholders; provided that no such determination shall preclude an action brought in an appropriate court to challenge such determination.

10.4. Advance Payment of Expenses. To the extent not prohibited by applicable law, expenses incurred in defense of a claim against a Dual Role Person (as defined in Section 14) pursuant to Section 9.1(ii) or Section 9.1(iii) and expenses incurred by a person who is or was a director or officer of the Corporation in defending a civil or criminal action, suit, proceeding or claim shall be paid by the Corporation in advance of the final disposition of such action, suit, proceeding or claim, and expenses incurred by a person who is or was an employee or agent of the Corporation in defending a civil or criminal action, suit, proceeding or claim may be paid by the Corporation in advance of the final disposition of such action, suit, proceeding or claim as authorized by or at the direction of the Board, in any case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in or pursuant to this Section 10 or otherwise.

10.5. Rights Not Exclusive. The indemnification and other rights provided by this Section 10 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any agreement, vote of stockholders or disinterested directors or otherwise, and the Corporation is hereby specifically authorized to provide such indemnification and other rights by any agreement, vote of stockholders or disinterested directors or otherwise. The Corporation shall be considered the indemnitor of first resort in all circumstances to which this Section 10 applies.

10.6. Indemnification Agreements Authorized. Without limiting the other provisions of this Section 10, the Corporation is authorized from time to time, without further action by the stockholders of the Corporation, to enter into agreements with any director, officer, employee or agent of the Corporation, or any person who is otherwise serving on behalf of the Corporation at the request of the Corporation as a director, officer, manager, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (whether incorporated or unincorporated, for-profit or not-for-profit), providing such rights of indemnification as the Corporation may deem appropriate, up to the maximum extent permitted by law. Any agreement entered into by the Corporation with a director may be authorized by the other directors, and such authorization shall not be invalid on the basis that similar agreements may have been or may thereafter be entered into with other directors.

10.7. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or who is or was otherwise serving on behalf of the Corporation at the request of the Corporation as a director, officer, manager, employee or agent of another corporation, partnership, joint venture, trust or other enterprise

(whether incorporated or unincorporated, for-profit or not-for-profit) against any claim, liability or expense asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Section 10.

10.8. Certain Definitions. For purposes of this Section 10:

(i) Any director, officer, employee or agent of the Corporation who shall serve as a director, officer, manager, employee, member or agent of another corporation, partnership, joint venture, trust or other enterprise of which the Corporation, directly or indirectly, is or was the owner of 20% or more of the outstanding voting stock (or comparable interests), shall be deemed to be so serving at the request of the Corporation, unless the Board shall determine otherwise. In all other instances when any person shall serve as a director, officer, manager, employee, member or agent of another corporation, partnership, joint venture, trust or other enterprise of which the Corporation is or was a shareholder or creditor, or in which the Corporation is or was otherwise interested, if it is not otherwise established that such person is or was serving as a director, officer, manager, employee, member or agent at the request of the Corporation, the Board may determine whether such service is or was at the request of the Corporation, and it shall not be necessary to show any actual or prior request for such service. For the avoidance of doubt, any person who is deemed to be serving at the request of the Corporation pursuant to this Section 10.8 is only deemed to be serving at the request of the Corporation for purposes of this Section 10, and is not actually employed by the Corporation.

(ii) References to a corporation include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, manager, employee, member or agent of a constituent corporation or is or was serving at the request of a constituent corporation as a director, officer, manager, employee, member or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Section 10 with respect to the resulting or surviving corporation as such person would if such person had served the resulting or surviving corporation in the same capacity.

(iii) The term "other enterprise" shall include, without limitation, employee benefit plans and voting or taking action with respect to stock or other assets therein; the term "serving at the request of the Corporation" shall include, without limitation, any service as a director, officer, manager, employee, member or agent of a corporation or other entity which imposes duties on, or involves services by, a director, officer, employee or agent of the Corporation with respect to any employee benefit plan or its participants or beneficiaries, and unless a person's conduct in connection with an employee benefit plan is finally adjudicated to have been knowingly fraudulent, deliberately dishonest or willful misconduct, such person shall be deemed to have satisfied any standard of care required by or pursuant to this Section 10 in connection with such plan; and the term "fines" shall include, without limitation, any excise taxes assessed on a person with respect to an employee benefit plan and also shall include any damages (including treble damages) and any other civil penalties.

10.9. Survival. The indemnification and other rights provided pursuant to this Section 10 shall apply both to action by any director, officer, employee or agent of the Corporation in an official capacity and to action in another capacity (including, without limitation, any other service on behalf of the Corporation or any service at the request of the Corporation as a director, officer, manager, employee, member or agent of another corporation, partnership, joint venture, trust or other enterprise (whether

incorporated or unincorporated, for-profit or not-for-profit) while holding such office or position and shall continue as to a person who has ceased to be a director, officer, employee or agent of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such a person. Notwithstanding any other provision in this Amended Certificate of Incorporation, any indemnification rights arising under or granted pursuant to this Section 10 shall survive amendment or repeal of this Section 10 with respect to any acts or omissions occurring prior to the effective time of such amendment or repeal and persons to whom such indemnification rights are given shall be entitled to rely upon such indemnification rights with respect to such acts or omissions occurring prior to the effective time of such amendment or repeal as a binding contract with the Corporation.

10.10. Liability of the Directors. The liability of the Corporation's directors to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director shall be eliminated to the fullest extent permitted by law. It is the intention of the Corporation to eliminate such liability, whether to the Corporation, its stockholders or otherwise, to the fullest extent permitted by law. Consequently, should the General Corporation Law or any other applicable law be amended or adopted hereafter so as to permit the elimination or limitation of such liability, the liability of the directors of the Corporation shall be so eliminated or limited without the need for amendment of this Amended Certificate of Incorporation or further action on the part of the stockholders of the Corporation. Any repeal or modification of this Section 10 by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

10.11. Amendment. This Section 10 may be amended, altered, changed or repealed, or a provision inconsistent with this Section 10 may be adopted, only upon the affirmative vote of not less than 85% of the total voting power of all of the outstanding shares of Common Stock then entitled to vote in the election of directors, voting together as a single class.

11. Amendment or Repeal of Bylaws. A majority of all of the members of the Board may amend, alter, change or repeal any provision of the Bylaws; provided that the Board shall not have the power to amend, alter, change or repeal any provision of the Bylaws relating to amendment in any manner that alters the stockholders' power to amend, alter, change or repeal the Bylaws. The stockholders of the Corporation also may amend, alter, change or repeal any provision of the Bylaws upon the affirmative vote of a majority of all of the voting power of the Corporation entitled to vote thereon; provided that the stockholders shall not have the power to amend, alter, change or repeal any provision of the Bylaws relating to amendment in any manner that alters the Board's power to amend, alter, change or repeal the Bylaws.

12. Amendment or Repeal of Certificate. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended Certificate of Incorporation in the manner now or hereafter prescribed by the General Corporation Law, except as otherwise set forth herein, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other Persons whomsoever by and pursuant to this Amended Certificate of Incorporation in its present form or as hereafter amended, are granted and held subject to this reservation.

13. Severability. If any provision or provisions of this Amended Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Amended Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Amended Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

14. Definitions. As used in this Amended Certificate of Incorporation, unless the context otherwise requires or as set forth in another Section of this Amended Certificate of Incorporation, the term:

“Affiliate” means a Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, another Person.

“Amended Certificate of Incorporation” is defined in the Recitals.

“BellRing Brands, LLC” means BellRing Brands, LLC, a Delaware limited liability company, and its successors and assigns.

“Board” is defined in Section 5.1(ii)(1).

“Bylaws” is defined in Section 6.2.

“Class A Common Stock” is defined in Section 4.1.

“Class B Common Stock” is defined in Section 4.1.

“Common Stock” is defined in Section 4.1.

“Control” (including the terms “Controlling” and “Controlled”) means the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. The definition of Control and correlated terms set forth in Section 8.3(iii) shall only apply for purposes of Section 8.

“Controlled Company” means, with respect to the Corporation, any Person Controlled by the Corporation, including BellRing Brands, LLC.

“Corporation” is defined in the Recitals.

“Dual Role Person” means each of (1) any director, officer, manager, employee or agent of the Corporation and/or any of its Controlled Companies who is also a director, officer, employee, agent and/or Affiliate of Post and (2) Post.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and any successor law or statute, together with the rules and regulations promulgated thereunder.

“General Corporation Law” is defined in the Recitals.

“Investor Rights Agreement” means the Investor Rights Agreement dated as of October 21, 2019 between PHI and the Corporation (as the same may be amended, restated, supplemented and/or otherwise modified from time to time).

“LLC Agreement” means the Amended and Restated Limited Liability Company Agreement of BellRing Brands, LLC, dated as of October 21, 2019, as the same may be amended, restated, supplemented and/or otherwise modified, from time to time.

“Non-Affiliated BellRing Brands, LLC Member” is defined in Section 5.1(i)(2).

“Nonvoting Common Unit” means a Nonvoting Common Unit of BellRing Brands, LLC as defined in the LLC Agreement.

“Original Certificate of Incorporation” is defined in the Recitals.

“Person” means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity.

“Post” means Post Holdings, Inc. and its Affiliates (other than the Corporation and its Controlled Companies), successors and assigns.

“Preferred Stock” is defined in Section 4.1.

“Stock Adjustment” is defined in Section 5.1(ii)(3).

“Triggering Event” means the first date on which Post ceases to own of record more than 50% of the outstanding Nonvoting Common Units.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation of BellRing Brands, Inc. has been duly executed by the authorized officer below this 16th day of October, 2019.

By: /s/ Darcy Horn Davenport

Name: Darcy Horn Davenport

Title: President and Chief Executive Officer

[SIGNATURE PAGE TO AMENDED AND RESTATED CERTIFICATE OF INCORPORATION]

BYLAWS
OF
BELLRING BRANDS, INC.

(As Amended and Restated October 21, 2019)

* * *

ARTICLE I – STOCKHOLDERS

SECTION 1. ANNUAL MEETING: The annual meeting of stockholders shall be held at the principal executive office of BellRing Brands, Inc. (the “Company”), or at such other place either within or without the State of Delaware as the Board of Directors (the “Board”) may from time to time determine, on such date and at such time as may be determined by the Board, to elect directors and transact such other business as may properly come before the meeting. At any annual meeting of stockholders only such business shall be conducted, and only such proposals shall be acted upon, as shall have been properly brought before the meeting by the Board or by a stockholder of record entitled to vote at such meeting.

SECTION 2. SPECIAL MEETINGS: Special meetings of the stockholders or of the holders of any class of capital stock of the Company, unless otherwise prescribed by statute or by the Certificate of Incorporation of the Company (as may be amended from time to time, including the terms of any certificate of designation for any series of the Company’s preferred stock, the “Certificate of Incorporation”), may be called only by (a) the affirmative vote of a majority of the Board, (b) the Chairperson of the Board, (c) by the Secretary of the Company, on the request of Post Holdings, Inc. and its successors (“Post”), for such a meeting in writing so long as Post and its subsidiaries (other than the Company and its subsidiaries) own of record, in the aggregate, more than 50% of the Nonvoting Common Units of BellRing Brands, LLC, a Delaware limited liability company (as defined in the Amended and Restated Limited Liability Company Agreement of BellRing Brands, LLC, dated as of October 21, 2019, as the same may be amended, restated, supplemented and/or otherwise modified, from time to time) or (d) the President of the Company. Such request shall be delivered to the Secretary of the Company and shall state the purpose or purposes of the proposed meeting. Upon such direction or request, subject to any requirements or limitations imposed by the Certificate of Incorporation, by these Bylaws or by law, it shall be the duty of the Secretary of the Company to call a special meeting of the stockholders to be held at such time as is specified in the request. Only such business shall be conducted, and only such proposals shall be acted upon, as is specified in the call of any special meeting of stockholders.

SECTION 3. NOTICE: (a) Unless otherwise required by the General Corporation Law of the State of Delaware (as from time to time in effect, the “General Corporation Law”), notice of each meeting of the stockholders, whether annual or special, shall be given in writing or by electronic transmission or otherwise, except that it shall not be necessary to give notice to any stockholder who properly waives notice before or after the meeting, whether in writing or by electronic transmission or otherwise, and no notice of an adjourned meeting need be given, except when required under these Bylaws or by law. Such notice shall state the date, time and place, if any, of the meeting (and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person at such meeting), the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and in the case of a special meeting, also shall state the purpose or purposes thereof. Except as otherwise required by law, each notice of a meeting shall be given in any manner permitted by law not less than 10 nor more than 60 days before the meeting and shall state the time and place of the meeting, and unless it is the annual meeting, shall state at whose direction or request the meeting is called and the purposes for

which it is called. The attendance of any stockholder at a meeting, without protesting at the beginning of the meeting that the meeting is not lawfully called or convened, shall constitute a waiver of notice of such meeting, and the requirement of notice also may be waived in accordance with Section 3 of Article V of these Bylaws. Any previously scheduled meeting of stockholders may be postponed and (unless the Certificate of Incorporation otherwise provides) any special meeting of stockholders may be canceled or postponed, by resolution of the Board upon public announcement (as defined in Section 8(c) of Article I of these Bylaws) given on or prior to the date previously scheduled for such meeting of stockholders, except that no special meeting of stockholders called by Post may be postponed, rescheduled or cancelled by the Company without the prior written consent of Post.

(b) Without limiting the manner by which notice may otherwise be given effectively to stockholders, any notice to a stockholder given by the Company may be given by a form of electronic transmission. For purposes of these Bylaws, "electronic transmission" shall mean any process of communication, not directly involving the physical transfer of paper, that is suitable for the retention, retrieval and reproduction of information by the recipient.

(c) Notice shall be deemed given, if mailed, when deposited in the United States mail with postage prepaid, if addressed to a stockholder at his, her or its address on the Company's records. Notice given by electronic transmission shall be deemed given (i) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (ii) if by any facsimile, electronic mail or other form of electronic transmission, when directed to the stockholder at his, her or its address on the Company's records. An affidavit of the Secretary or an Assistant Secretary or the transfer agent or other agent of the Company that notice has been given, whether by a form of electronic transmission or otherwise, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

SECTION 4. QUORUM: Except as otherwise required by law, the holders of shares representing a majority of the combined voting power of the Company entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business; provided, however, that where a separate vote by a class or series of capital stock or classes or series of capital stock is required, a majority of the voting power of such class or series or classes or series entitled to vote shall constitute a quorum with respect to such vote. Less than such quorum shall have the right successively to adjourn the meeting to a specified date not more than 30 days after such adjournment, and no notice need be given of such adjournment to stockholders not present at such meeting. The stockholders present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of such numbers of stockholders as to reduce the remaining stockholders to less than a quorum.

SECTION 5. ACTION BY CONSENT: From and after the Triggering Event (as defined in the Certificate of Incorporation), any action required by the General Corporation Law to be taken at any annual or special meeting of stockholders of the Company, or any action which may be taken at any annual or special meeting of stockholders of the Company, may be effected only at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing by

such stockholders. Unless otherwise prescribed by the Certificate of Incorporation, prior to the Triggering Event, any action required by the General Corporation Law to be taken at any annual or special meeting of stockholders of the Company, or any action which may be taken at any annual or special meeting of stockholders of the Company, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of Common Stock (as defined in the Certificate of Incorporation) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given by the Company to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Company.

SECTION 6. VOTING: The shares of the Class A Common Stock (as defined in the Certificate of Incorporation) and the share of the Class B Common Stock (as defined in the Certificate of Incorporation) shall have the voting rights set forth in the Certificate of Incorporation. Except as otherwise provided in the Certificate of Incorporation, each stockholder shall at every meeting of the stockholders be entitled to vote the number of votes in person or by proxy for each share of the class of capital stock having voting power held by such stockholder. If a quorum is present, the affirmative vote of the majority of the voting power represented in person or by proxy and entitled to vote at the meeting shall be the act of the stockholders, except in connection with the election of directors or as otherwise required by the Certificate of Incorporation, by these Bylaws or by law. No person shall be permitted to vote on any shares belonging or hypothecated to the Company.

SECTION 7. PROXIES: The following shall constitute valid means by which a stockholder may authorize a person to act for the stockholder as a proxy:

(a) A stockholder or the stockholder's duly authorized attorney-in-fact may execute a writing authorizing another person to act for the stockholder as proxy. Execution may be accomplished by the stockholder or duly authorized attorney-in-fact signing such writing or causing the stockholder's signature to be affixed to such writing by any reasonable means, including, but not limited to, facsimile signature;

(b) A stockholder may authorize another person to act for the stockholder as proxy by transmitting or authorizing the transmission of a facsimile or other means of electronic transmission, or by telephone, to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such facsimile or other means of electronic transmission or telephonic transmission shall either set forth or be submitted with information from which it can be determined that the facsimile or other electronic transmission or telephonic transmission was authorized by the stockholder. If it is determined that such facsimiles or other electronic transmissions or telephonic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making such determination, shall specify the information upon which they relied; or

(c) The holder of the Class B Common Stock may grant one or more proxies or enter into one or more voting agreements or arrangements as provided in the Certificate of Incorporation.

SECTION 8. BUSINESS TO BE CONDUCTED; ADVANCE NOTICE: (a) At an annual meeting of stockholders, only such business (other than nominations of directors, which must be made in compliance with, and shall be exclusively governed by, Section 1 of Article II of these Bylaws) shall be conducted as shall have been brought before the meeting (i) pursuant to the Company's notice of the meeting (or any supplement thereto), (ii) by or at the direction of the Board or any committee thereof or (iii) by any stockholder of the Company who is a stockholder of record at the time of giving of the notice provided for in this Section 8 of Article I of these Bylaws, and at the time of the annual meeting, who

shall be entitled to vote at such meeting and, in the case of any stockholder other than Post, who shall have complied with the notice procedures set forth in this Section 8 of Article I of these Bylaws; clause (iii) shall be the exclusive means for a stockholder, other than Post, to submit such business to be brought before the meeting (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) and to be included in the Company’s notice of meeting before or at an annual meeting of stockholders.

(b) At any special meeting of stockholders, only such business or proposals as are specified in the notice of the meeting may be properly brought before the meeting.

(c) For any such business to be properly brought before an annual meeting by a stockholder of record, other than Post, pursuant to Section 8(a)(iii) of this Article I of these Bylaws, the stockholder must have given timely notice thereof in writing to the Secretary of the Company and any such proposed business must constitute a proper matter for stockholder action. To be timely, a stockholder’s notice, in writing, must be delivered to, or mailed to and received by, the Secretary of the Company at the principal executive office of the Company not less than 90 days nor more than 120 days prior to the first anniversary of the date of the preceding year’s annual meeting (and for purposes of calculating this date with respect to the first annual meeting after the date shares of capital stock of the Company are first publicly traded (the “IPO Date”), the Company shall be deemed to have held an annual meeting on January 24, 2019); provided, however, that in the event that the date of the meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder must be received not earlier than the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or the 10th day following the day on which public announcement of the date of the annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder’s notice as described above. For purposes of these Bylaws, “public announcement” shall include disclosure in a press release reported by a national news service or in a publicly available document filed or furnished by the Company with the Securities and Exchange Commission pursuant to the Exchange Act.

(d) No business (other than the election of directors) shall be conducted at an annual meeting, except in accordance with the procedures set forth in this Section 8 of Article I of these Bylaws. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the person presiding over the meeting (the “chairperson”) may, if the facts warrant, determine that the proposed business was not properly brought before the meeting in accordance with the provisions of this Section 8 of Article I of these Bylaws (including whether the stockholder or beneficial owner, if any, on whose behalf the proposal is solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder’s proposal in compliance with such stockholder’s representation as required by Section 8(e)(iii)(d) of Article I of these Bylaws); and if the chairperson should so determine, the chairperson shall so declare to the meeting, and any such proposed business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 8 of Article I of these Bylaws, a stockholder also shall comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 8 of Article I of these Bylaws; provided, however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to business proposals to be considered pursuant to Section 8 of Article I of these Bylaws (including Section 8(a)(iii) of Article I of these Bylaws). Nothing in this Section 8 of Article I of these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Company’s proxy statement pursuant to Rule 14a-8 under the Exchange Act. The provisions of this Section 8 of Article I of these Bylaws also shall govern what constitutes timely notice for purposes of Rule 14a-4(c) of the Exchange Act.

(e) For any such business to be properly brought before a meeting, such stockholder's notice to the Secretary of the Company shall set forth as to each matter he or she proposes to bring before the meeting:

(i) a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including any proposed resolutions for consideration and, in the event that such business includes a proposal to request or otherwise relating to the amendment of these Bylaws, the text of the proposed amendment), the reasons for proposing to conduct such business at the meeting and any material interest of such stockholder (and of the beneficial owner, if any, on whose behalf the proposal is made) in such business;

(ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made:

a. the name and address of such stockholder and beneficial owner as they appear in the Company's stockholder records;

b. (1) the class or series and number of shares of the Company's capital stock which are directly or indirectly beneficially owned or owned of record by such stockholder and such beneficial owner, (2) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of capital stock of the Company or with a value derived in whole or in part from the value of any class or series of shares of capital stock of the Company, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Company or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder or beneficial owner and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Company, (3) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or beneficial owner has a right to vote any shares or any security of the Company, (4) any short interest of such stockholder or beneficial owner in any security of the Company (for purposes of these Bylaws, a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (5) any rights to dividends on the shares of the Company owned beneficially by such stockholder or beneficial owner that are separated or separable from the underlying shares of the Company, (6) any proportionate interest in shares of the Company or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company in which such stockholder or beneficial owner is a general partner or manager or directly or indirectly beneficially owns an interest in a general partner or manager, (7) any performance-related fees (other than an asset-based fee) that such stockholder or beneficial owner is entitled to based on any increase or decrease in the value of shares of the Company or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's or beneficial owner's immediate family sharing the same household, and (8) any other information relating to such stockholder or beneficial

owner that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies for, as applicable, the proposal and/or the election of directors in a contested election, or is otherwise required, pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder (the foregoing items (1) through (8), individually or collectively, the “Proposing Stockholder Information,” which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership or other information as of the record date);

c. a representation that the stockholder is a holder of record of shares of the Company, is entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to propose such business; and

d. a representation as to whether the stockholder or the beneficial owner, if any, is or intends to be part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Company’s outstanding capital stock required to approve or adopt the proposal or (2) otherwise to solicit proxies from stockholders in support of such proposal. The meaning of the term “group” shall be within the meaning ascribed to such term under Section 13(d)(3) of the Exchange Act.

The proposed business must not be an improper subject for stockholder action under applicable law, and the stockholder must comply with state law, the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 8 of Article I of these Bylaws.

SECTION 9. ORGANIZATION; CONDUCT OF STOCKHOLDER MEETINGS: (a) Each meeting of stockholders shall be convened by the President, Secretary or other officer of the Company or other person calling the meeting by notice given in accordance with these Bylaws. The Chairperson of the Board, or any person appointed by the Chairperson of the Board prior to any meeting of stockholders, shall act as chairperson of each meeting of stockholders. In the absence of the Chairperson of the Board, or a person appointed by the Chairperson of the Board to act as chairperson of the meeting, the stockholders present at the meeting shall designate a stockholder or officer of the Company present to act as chairperson of the meeting. The Secretary of the Company, or a person designated by the chairperson, shall act as secretary of each meeting of stockholders. Whenever the Secretary of the Company shall act as chairperson of the meeting, or shall be absent, the chairperson of the meeting shall appoint a person present to act as secretary of the meeting.

(b) The Board shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem appropriate. Subject to such rules and regulations of the Board, if any, the person presiding over the meeting shall have the right and authority to convene and adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the person presiding over the meeting, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, adjournment of the meeting, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the Company and their duly authorized and constituted proxies and such other persons as the person presiding over the meeting shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants, either by the person presiding over the meeting or by vote of the shares present in person or by proxy at the meeting, and regulation of the voting or balloting, as applicable, including, without limitation, matters which are to be voted on by ballot, if any. The chairperson of the meeting shall have sole, absolute and complete authority and

discretion to decide questions of compliance with the foregoing procedures and his or her ruling thereon shall be final and conclusive. The chairperson of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if the chairperson of the meeting should so determine and declare, any such matter or business shall not be transacted or considered. Unless and to the extent determined by the Board or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

(c) Notwithstanding anything to the contrary in these Bylaws, unless otherwise required by law, if a stockholder (or qualified representative) does not appear at the annual or special meeting of stockholders of the Company to present business or a nomination proposed by such stockholder pursuant to Section 8 of Article I of these Bylaws or Section 1 of Article II of these Bylaws, such proposed business shall not be transacted and such nomination shall be disregarded, as the case may be, even though proxies in respect of such vote may have been received by the Company. In order to be considered a qualified representative of the stockholder for purposes of Section 8 of Article I of these Bylaws or Section 1 of Article II of these Bylaws, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

ARTICLE II – BOARD OF DIRECTORS

SECTION 1. ELECTION; TENURE; QUALIFICATIONS; NOMINATIONS: (a) The Board shall consist of not less than five nor more than twelve members, such directors to be classified in respect of the time for which they shall severally hold office by dividing them into three classes of approximately equal size, and the number of directors shall be fixed by a resolution of the Board adopted from time to time.

(b) In the event of any increase or decrease in the number of directors, the number of directors assigned to each class shall be adjusted as may be necessary so that all classes shall be as nearly equal in number as reasonably possible, except that one class may be one greater or one less in number than the other two classes. No reduction in the number of directors shall affect the term of office of any incumbent director. Subject to the foregoing and the rights of Post under the Investor Rights Agreement dated as of October 21, 2019 between Post and the Company (as the same may be amended, restated, supplemented and/or otherwise modified from time to time, the “Investor Rights Agreement”) (as long as such agreement is in effect), the Board shall determine the class or classes to which any director shall be assigned and the class or classes which shall be increased or decreased in the event of any increase or decrease in the number of directors.

(c) Each director shall hold office until a successor is duly elected and qualified or until the director’s earlier death, resignation, disqualification or removal. With respect to the members of the Board in office on October 21, 2019, the first class of directors shall hold office until the first annual meeting of stockholders following the IPO Date, the second class of directors shall hold office until the second annual meeting of stockholders following the IPO Date, and the third class of directors shall hold office until the third annual meeting of stockholders following the IPO Date. Thereafter, directors shall be elected to hold office for a term of three years, and at each annual meeting of stockholders, the successors to the class of directors whose term shall then expire shall be elected for a term expiring at the third succeeding annual meeting after that election or until their successors shall be elected and qualified.

(d) Subject to Section 1(h) in this Article II (including the exceptions for Post set forth therein) and in addition to the qualifications set out in Section 11 of Article II of these Bylaws, only persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible as directors at a meeting of stockholders. Nominations of persons for election to the Board may be made at an annual meeting of stockholders (i) pursuant to the Company's notice of the meeting (or any supplement thereto), (ii) by or at the direction of the Board or any committee thereof or (iii) by any stockholder of the Company who is a stockholder of record of the Company at the time of giving of the notice provided for in this Section 1 of Article II of these Bylaws, and at the time of the annual meeting, who shall be entitled to vote for the election of directors at the annual meeting and who shall have complied with the notice procedures set forth in this Section 1 of Article II of these Bylaws; the foregoing clause (iii), subject to Section 1(h) in this Article II (including the exceptions for Post set forth therein) shall be the exclusive means for a stockholder other than Post to make nominations of persons for election to the Board at an annual meeting of stockholders. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the notice of meeting (x) by or at the direction of the Board or any committee thereof or (y) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Company who is a stockholder of record at the time the notice provided in this Section 1(d) of Article II of these Bylaws is delivered to the Secretary of the Company, and at the time of the special meeting, who shall be entitled to vote at the special meeting for the election of directors at the special meeting and who shall have complied with the notice provisions set forth in this Section 1 of Article II of these Bylaws; the foregoing clause (y), subject to Section 1(h) in this Article II (including the exceptions for Post set forth therein) shall be the exclusive means for a stockholder other than Post to make nominations of persons for election to the Board at a special meeting of stockholders.

Subject to Section 1(h) in this Article II (including the exceptions for Post set forth therein) for any nominations by a stockholder other than Post to be properly brought before an annual or special meeting of stockholders pursuant to clauses (d)(iii) and (d)(y) of the preceding paragraph of these Bylaws, the stockholder must have given timely notice thereof in writing to the Secretary of the Company. To be timely, a stockholder's notice in writing must be delivered or mailed to and received by the Secretary of the Company at the principal executive office of the Company (i) in the case of an annual meeting, not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting (and for purposes of calculating this date with respect to the first annual meeting after the IPO Date, the Company shall be deemed to have held an annual meeting on January 24, 2019), provided, however, that in the event that the date of the meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder must be received not earlier than the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or the 10th day following the day on which public announcement (as defined in Section 8(c) of Article I of these Bylaws) of the date of the annual meeting is first made; or (ii) in the case of a special meeting at which directors are to be elected pursuant to the notice of meeting, not earlier than the 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or the 10th day following the day on which public announcement of the date of the meeting and of the nominees proposed by the Board to be elected at such meeting is first made. In no event shall any adjournment or postponement of a meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

At the request of the Board, any person nominated by the Board for election as a director shall furnish to the Secretary of the Company that information required to be set forth in a stockholder's notice of nomination under Section 1(e) in this Article II which pertains to the nominee. Notwithstanding anything in this Section 1 of Article II of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased effective at the annual meeting and there is no public announcement by the Company naming all of the nominees proposed by the Board for the additional directorships at least 70 days prior to the first anniversary of the preceding year's annual

meeting, a stockholder's notice required by this Section 1 of Article II of these Bylaws also shall be considered timely, but only with respect to nominees for such additional directorships, if it shall be delivered to the Secretary of the Company at the principal executive office of the Company not later than the close of business on the 10th day following the day on which such public announcement is first made by the Company.

(e) For nominations to be properly brought before an annual or special meeting, such stockholder's notice to the Secretary shall set forth as to each person whom the stockholder proposes to nominate for election or re-election as a director:

(i) the name, age, business address and residence of such person;

(ii) the principal occupation or employment of such person currently and for the previous five years;

(iii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships between or among such stockholder and beneficial owner, if any, on whose behalf the nomination is being made, and their respective affiliates and associates or others acting in concert therewith (on the one hand) and each proposed nominee and his or her respective affiliates and associates or others acting in concert therewith (on the other hand), including without limitation all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such requirement and the nominee were a director or executive officer of such registrant;

(iv) such person's representation that he or she is eligible to serve as a director pursuant to Section 11 of Article II of these Bylaws and whether such person has acted in any manner contrary to the best interest of the Company, including, but not limited to, the violation of any federal or state law or breach of any agreement between that person and the Company relating to his or her services as a director, employee or agent of the Company;

(v) such person's written consent to being named as a nominee and to serving as a director if elected; and

(vi) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies for election of directors in a contested election, or is otherwise required, pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder.

(f) Such stockholder's notice also shall set forth as to the stockholder(s) giving the notice and the beneficial owner, if any, on whose behalf the nomination is made:

(i) the name and address of such stockholder and beneficial owner, as they appear in the Company's stockholder records;

(ii) the Proposing Stockholder Information as defined in Section 8(e) of Article I of these Bylaws;

(iii) a representation that the stockholder is a holder of record of shares of the Company, is entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice;

(iv) any other information relating to such stockholder or beneficial owner that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies for the election of directors in a contested election, or is otherwise required pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder; and

(v) a representation as to whether the stockholder or beneficial owner, if any, is or intends to be part of a group (as defined in Section 8(e) of Article I of these Bylaws) which intends (i) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Company's outstanding capital stock required to elect the nominee, or (ii) otherwise solicit proxies from stockholders in support of such nominee.

(g) In addition to the qualifications set out in Section 11 of Article II of these Bylaws, to be eligible to be a nominee for election or reelection as a director of the Company, the prospective nominee (whether nominated by or at the direction of the Board or by a stockholder), or someone acting on such prospective nominee's behalf, must deliver (in accordance with any applicable time periods prescribed for delivery of notice under this Section 1 of Article II of these Bylaws) to the Secretary of the Company at the principal executive office of the Company a written questionnaire providing such information with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made that would be required to be disclosed to stockholders pursuant to applicable law or the rules and regulations of any stock exchange applicable to the Company, including without limitation (i) all information concerning such person that would be required to be disclosed in solicitation of proxies for election of directors pursuant to and in accordance with Regulation 14A under the Exchange Act and (ii) any information the Company may reasonably request to determine the eligibility of the proposed nominee to serve as an independent director under the rules of any exchange upon which shares of the Company's capital stock are then listed or that could be material to a reasonable stockholder's understanding of the independence or lack thereof of such nominee (which questionnaire shall be provided by the Secretary upon written request). The prospective nominee also must provide a written representation and agreement, in the form provided by the Secretary of the Company upon written request, that such prospective nominee: (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such prospective nominee, if elected as a director of the Company, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Company or (2) any Voting Commitment that could limit or interfere with such prospective nominee's ability to comply, if elected as a director of the Company, with such prospective nominee's fiduciary duties under applicable law; (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity (other than the Company) with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein; and (C) would be in compliance, if elected as a director of the Company, and will comply with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Company. For purposes of this Section 1(g) of Article II of these Bylaws a "nominee" shall include any person being considered to fill a vacancy on the Board.

(h) For so long as the Investor Rights Agreement is in effect, the notice and other requirements set forth in Section 1(d) through this Section 1(h) of Article II of these Bylaws shall not apply to Post or any Post Nominees (as defined in the Investor Rights Agreement). Subject to the preceding sentence, no person shall be eligible for election as a director of the Company unless nominated in accordance with the procedures set forth in this Section 1 of Article II of these Bylaws and qualified under Section 11 of Article II of these Bylaws. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chairperson of the meeting may, if the facts warrant, determine that a nominee is not qualified or a nomination was not properly made in accordance with the procedures prescribed in this Section 1 of Article II of these Bylaws (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee in compliance with such stockholder's representation as required by clause (f)(v) of this Section 1 of Article II of these Bylaws); and if the chairperson should so determine, the chairperson shall so declare to the meeting, and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 1 of Article II of these Bylaws, a stockholder also shall comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 1 of Article II of these Bylaws; provided, however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations to be considered pursuant to this Section 1 of Article II of these Bylaws (including clause (d) of this Section 1). Nothing in this Section 1 of Article II of these Bylaws shall be deemed to affect any rights of the holders of any series of preferred stock of the Company to elect directors pursuant to any applicable provisions of the Certificate of Incorporation or the rights of Post under the Investor Rights Agreement (so long as such agreement is in effect).

SECTION 2. POWERS: The Board shall have power to manage and control the property and affairs of the Company, and to do all such lawful acts and things which, in its absolute judgment and discretion, it may deem necessary and appropriate for the expedient conduct and furtherance of the Company's business.

SECTION 3. CHAIRPERSON: The directors shall elect one of the members of the Board to be Chairperson of the Board. The Chairperson shall preside at all meetings of the Board, unless absent from such meeting, in which case, if there is a quorum, the directors present may elect another director to preside at such meeting.

SECTION 4. MEETINGS: (a) Regular meetings of the Board shall be held on such days and at such times and places either within or without the State of Delaware as shall from time to time be fixed by the Board. Notice of such regular meetings need not be given. Special meetings of the Board may be held on any day and at any time and place, within or without the State of Delaware, upon the call of the Chairperson of the Board or the President or Secretary of the Company, by oral, written or email notice duly given, sent or mailed to each director, at such director's last known address, not less than twenty-four hours before such meeting; provided, however, that any director may, at any time, in writing or by email, waive notice of any meeting at which he or she may not be or may not have been present. Attendance of a director at any meeting shall constitute a waiver of notice of the meeting, except where a director attends a meeting for the sole and express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Board need be specified in the notice or waiver of notice of such meeting. Rules of procedure for the conduct of such meetings may be adopted by resolution of the Board.

(b) Members of the Board or of any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or other communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

SECTION 5. ACTION BY CONSENT: Unless otherwise specifically prohibited by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all members of the Board or such committee, as the case may be, execute a consent thereto in writing, or by electronic transmission, setting forth the action so taken. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board or committee in the same paper or electronic form as the minutes are maintained.

SECTION 6. QUORUM: A majority of the Board then in office shall constitute a quorum at all meetings of the Board (provided that in no event shall less than one-third of the entire Board constitute a quorum), and the act of the majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, unless a greater number of directors is required by the Certificate of Incorporation, by these Bylaws or by law. At any meeting of directors, whether or not a quorum is present, the directors present thereat may adjourn the same from time to time without notice other than announcement at the meeting. A director who may be disqualified, by reason of personal interest, from voting on any particular matter before a meeting of the Board may nevertheless be counted for the purpose of constituting a quorum of the Board.

SECTION 7. RESIGNATION OF DIRECTORS: Any director of the Company may resign at any time by giving written notice of such resignation to the Board, the Chairperson of the Board or the President or Secretary of the Company. Any such resignation shall take effect at the time specified therein or, if no time is specified, upon receipt thereof by the Board, the Chairperson of the Board or one of the above-named officers of the Company; and, unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 8. VACANCIES: Subject to the rights, if any, of the holders of any class of capital stock of the Company (other than the Common Stock) then outstanding and the rights of Post under the Investor Rights Agreement (so long as such agreement is in effect), any vacancies in the Board which occur for any reason prior to the expiration of the term of office of the class of directors in which the vacancy occurs, including vacancies which occur by reason of an increase in the number of directors, may be filled (i) by the Board, acting by the affirmative vote of a majority of the remaining directors then in office (even if less than a quorum), or by a sole remaining director, (ii) at a special meeting of stockholders of the Company called for such purpose, or (iii) prior to the Triggering Event, by written consent of one or more stockholders of the Company, in each case until the next election of directors by the stockholders of the Company at which such class of directors is elected.

SECTION 9. COMPENSATION OF DIRECTORS: The Board may, by resolution passed by a majority of the entire Board, fix the terms and amount of compensation payable to any person for his or her services as director, if he or she is not otherwise compensated for services rendered as an officer or employee of the Company; provided, however, that any director may be reimbursed for reasonable and necessary expenses of attending meetings of the Board, or otherwise incurred for any Company purpose; and provided, further, that members of any special or standing committee of directors also may be allowed compensation and expenses similarly incurred. Nothing herein contained shall be construed to preclude any director from serving the Company in any other capacity and receiving compensation therefor.

SECTION 10. COMMITTEES OF THE BOARD OF DIRECTORS: Subject to the rights of Post under the Investor Rights Agreement (so long as such agreement is in effect), the Board (i) may, by resolution passed by a majority of the entire Board, designate two or more directors to constitute an Executive Committee of the Board which shall, to the fullest extent permitted by law, have and exercise all of the authority of the Board in the management of the Company, in the intervals between meetings of the Board, (ii) may appoint any other committee or committees, with such members, functions and powers as the Board may designate, and (iii) shall have the power at any time to fill vacancies in, to change the size or membership of, or to dissolve,

any one or more of such committees. Each such committee shall have such name as may be determined by the Board and shall keep regular minutes of its proceedings and report the same to the Board for approval as required. At all meetings of a committee, a majority of the committee members then in office shall constitute a quorum for the purpose of transacting business, and the acts of a majority of the committee members present at any meeting at which there is a quorum shall be the acts of the committee. A director who may be disqualified, by reason of personal interest, from voting on any particular matter before a meeting of a committee may nevertheless be counted for the purpose of constituting a quorum of the committee. Any action which is required to be or may be taken at a meeting of a committee of directors may be taken without a meeting if consents in writing, setting forth the action so taken, are signed, including signing by electronic transmission, by all of the members of the committee.

SECTION 11. QUALIFICATIONS: A director shall not be eligible for reelection after his or her 72nd birthday, unless the Board or the applicable committee of the Board determines that such director continues to meet the criteria for Board service and, in the case such determination is made by such committee of the Board, recommends to the Board that he or she stand for reelection notwithstanding his or her age.

ARTICLE III – OFFICERS

SECTION 1. OFFICERS; ELECTION: The officers of the Company shall be a Chief Executive Officer, a President and a Secretary, each of whom shall be elected by the Board. The Board may from time to time elect and appoint one or more Assistant Secretaries of the Board and one or more Vice Chairpersons of the Board. In addition, the President may from time to time elect and appoint the other officers of the Company, including one or more Executive Vice Presidents, one or more Senior Vice Presidents, a Controller, a Treasurer and such other officers as the President may deem appropriate. Any two or more offices may be held by the same person except the offices of Chairperson of the Board and Secretary.

SECTION 2. TERMS: All officers of the Company shall hold their respective offices until their death, resignation or removal.

SECTION 3. POWERS; DUTIES: Each officer of the Company shall have such powers and duties as may be prescribed by resolution of the Board or as may be assigned by the Board or the President of the Company.

SECTION 4. REMOVAL: Any officer or agent may be removed by the person or persons, which shall include the Board where applicable, that have authority to appoint such officer or agent, with or without cause, whenever in such person's or persons' judgment, as applicable, the best interest of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer or agent so removed. Any vacancy occurring in any office of the Company shall be filled by the person or persons, which shall include the Board where applicable, that have authority to appoint such officer.

ARTICLE IV – CAPITAL STOCK

SECTION 1. STOCK CERTIFICATES AND UNCERTIFICATED SHARES: (a) The shares of the Company shall be represented by certificates; provided, however, that the Board may provide by resolution that some or all of any classes or series of the Company's capital stock shall be uncertificated

shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Every holder of stock represented by certificates shall be entitled to have a certificate, in any form approved by the Board, signed by any two authorized officers of the Company (it being understood that the Chairperson of the Board, the Chief Executive Officer, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer and any Assistant Treasurer shall be an authorized officer for such purpose), and shall bear the corporate seal of the Company. If the certificate is countersigned by a transfer agent or registrar other than the Company or its employee, any other signature and the corporate seal appearing on certificates of stock may be facsimile, engraved or printed. In case any such officer, transfer agent or registrar who has signed or whose facsimile, engraved or printed signature appears on any such certificate shall have ceased to be such officer, transfer agent or registrar before the certificate is issued, such certificate may nevertheless be issued by the Company with the same effect as if such officer, transfer agent or registrar had not ceased to be such officer, transfer agent or registrar at the date of its issue. Every holder of uncertificated shares shall be entitled to receive a statement of holdings as evidence of share ownership.

(b) All certificates of stock of each class and series shall be numbered appropriately.

SECTION 2. RECORD OWNERSHIP: The Company shall maintain a record of the name and address of the holder of each share of Company capital stock, the number of shares held by such holder thereby, and the date of issue thereof. The Company shall be entitled to treat the holder of record of any share of capital stock as the holder in fact thereof, and accordingly it will not be bound to recognize any legal, equitable or other claim of interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

SECTION 3. TRANSFERS: Transfers of shares of capital stock shall be made on the books of the Company only by direction of the holder thereof in person or by his, her or its duly authorized attorney or legal representative. Upon transfer of certificated shares, the old certificates shall be surrendered to the Company by the delivery thereof to the person in charge of the capital stock and transfer books and ledgers, or to such other persons as the Board may designate, by whom they shall be cancelled and new certificates shall thereupon be issued. In the case of uncertificated shares, transfer shall be made only upon receipt of transfer documentation reasonably acceptable to the Company.

SECTION 4. TRANSFER AGENTS; REGISTRARS: The Board shall, by resolution, from time to time appoint one or more transfer agents, that may be officers or employees of the Company, to make transfers of shares of capital stock of the Company and one or more registrars to register shares of capital stock issued by or on behalf of the Company. The Board may adopt such rules as it may deem expedient concerning the issue, transfer and registration of shares of capital stock of the Company.

SECTION 5. LOST CERTIFICATES: The Company may issue a new certificate in place of any certificate theretofore issued by it which is alleged to have been lost, stolen or destroyed and the Board may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the Company a bond in a sum and in a form approved by the Board, and with a surety or sureties which the Board finds satisfactory, to indemnify the Company and its transfer agents and registrars, if any, against any claim or liability that may be asserted against or incurred by it or any transfer agent or registrar on account of the alleged loss, theft or destruction of any certificate or the issuance of any new certificate. A new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper to do so. The Board may delegate to any officer or officers of the Company any of the powers and authorities contained in this section.

SECTION 6. RECORD DATES: In order that the Company may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the determination of the stockholders entitled to notice of or to vote at the adjourned meeting. In order that the Company may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating to the action taken.

ARTICLE V – SEAL, BOOKS, FISCAL YEAR, AMENDMENT

SECTION 1. SEAL: The corporate seal, if any, of the Company shall be in such form as may be approved from time to time by the Board. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

SECTION 2. PLACE FOR KEEPING BOOKS AND SEAL: The books of the Company, and its corporate minutes and corporate seal, shall be kept in the custody of the Secretary of the Company at the principal executive office of the Company, or at such other place or places and in the custody of such other person or persons as the Board may from time to time determine.

SECTION 3. NOTICES: (a) Whenever, under the provisions of applicable law, the Certificate of Incorporation or these Bylaws, written notice is required to be given to any director or stockholder, it shall not be construed to require personal notice, but such notice may be given by mail, by depositing the same in the post office or in a letter box, in a postage paid sealed wrapper, addressed to such director or stockholder at such address as appears on the books of the Company, and such notice shall be deemed to be given at the time when the same shall be thus mailed, or may be given by facsimile or other electronic transmission to the extent authorized or allowed by law.

(b) Any person may waive any notice required to be given under these Bylaws. Whenever notice is required to be given pursuant to the General Corporation Law, the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by facsimile or other electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting of stockholders or the Board or a committee thereof shall constitute a waiver of notice of such meeting, except when the stockholder or director attends such meeting for the express purpose of objecting, and such stockholder or director objects at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders or the Board or committee thereof need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or by these Bylaws.

SECTION 4. FISCAL YEAR: The fiscal year of the Company shall commence with the first day of October in each year.

SECTION 5. AMENDMENT: A majority of all of the members of the Board may amend, alter, change or repeal any provision of these Bylaws; provided that the Board shall not have the power to amend, alter, change or repeal this Section 5 of Article V of these Bylaws in any manner that alters the stockholders' power to amend, alter, change or repeal these Bylaws. The stockholders of the Company also may amend, alter, change or repeal any provision of these Bylaws upon the affirmative vote of a majority of all of the voting power of the Company entitled to vote thereon; provided that the stockholders shall not have the power to amend, alter, change or repeal this Section 5 of Article V of these Bylaws in any manner that alters the Board's power to amend, alter, change or repeal these Bylaws.

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

of

BELLRING BRANDS, LLC

Dated as of October 21, 2019

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AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”) of BellRing Brands, LLC, a Delaware limited liability company (the “Company”), dated as of October 21, 2019, by and among the Company, BellRing Brands, Inc., a Delaware corporation (“Pubco”), Post Holdings, Inc., a Missouri corporation (“Holdings”), and each other Person admitted as a Member pursuant to Section 3.02(a).

RECITALS

WHEREAS, the Company has been heretofore formed as a limited liability company under the Delaware LLC Act (as defined below) pursuant to a certificate of formation which was executed and filed with the Secretary of State of the State of Delaware on November 27, 2013, which certificate of formation was amended (i) pursuant to a certificate of amendment which was executed on January 24, 2014 and filed with the Secretary of State of the State of Delaware on January 27, 2014; (ii) pursuant to a certificate of amendment which was executed on February 13, 2014 and filed with the Secretary of State of the State of Delaware on February 14, 2014; and (iii) pursuant to a certificate of amendment which was executed on August 1, 2019 and filed with the Secretary of State of the State of Delaware on August 2, 2019;

WHEREAS, the Company and its members have previously entered into an amended and restated limited liability company agreement of the Company, dated as of November 24, 2015 (as so amended, the “Existing LLC Agreement”); and

WHEREAS, pursuant to the terms of the Master Transaction Agreement (the “Master Transaction Agreement”), dated as of October 7, 2019, by and among the Company, Pubco and Holdings, the parties thereto have agreed to consummate the separation of the Company and its business from Holdings as contemplated thereby and to take the other actions contemplated in such Master Transaction Agreement (collectively, the “Formation Transactions”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made and other good and valuable consideration, the parties hereto hereby agree to amend and restate the Existing LLC Agreement in its entirety as set forth herein.

ARTICLE I. DEFINITIONS AND USAGE

Section 1.01. Definitions.

(a) The following terms shall have the following meanings for the purposes of this Agreement:

“Additional Member” means any Person admitted as a Member of the Company pursuant to Section 3.02 in connection with the new issuance of Units to such Person.

“Adjusted Capital Account Deficit” means, with respect to any Economic Member, the deficit balance, if any, in such Economic Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts that such Economic Member is deemed to be obligated to restore pursuant to the penultimate sentence in Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

“Applicable Law” means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority or Regulatory Agency, as amended, that is binding upon or applicable to such Person or its assets, unless expressly specified otherwise.

“Assumed Tax Liability” means, with respect to an Economic Member, an amount equal to the Tax Rate multiplied by the estimated or actual taxable income of the Company, as determined for U.S. federal income tax purposes, allocated to such Economic Member for the period to which the Assumed Tax Liability relates as determined for federal income tax purposes to the extent not previously taken into account in determining the Assumed Tax Liability, as reasonably determined by the Board; provided that such Assumed Tax Liability shall never cause the pro rata amount distributed to Pubco pursuant to Section 5.03(e) to be less than an amount sufficient to enable Pubco to timely (x) satisfy all of its U.S. federal, state and local and non-U.S. tax liabilities, and (y) meet its obligations pursuant to the Tax Matters Agreement and Tax Receivable Agreement, in each case, as reasonably determined by the Board.

“Black-Out Period” means any “black-out” or similar period under Pubco’s policies covering trading in Pubco’s securities to which the applicable Redeeming Member is subject (or will be subject at such time as it owns Class A Common Stock), which period restricts the ability of such Redeeming Member to immediately resell shares of Class A Common Stock to be delivered to such Redeeming Member in connection with a Share Settlement.

“Business Day” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“Capital Account” means the capital account established and maintained for each Economic Member pursuant to Section 5.02.

“Capital Contribution” means, with respect to any Member, the amount of money and the initial Carrying Value of any Property (other than money) contributed to the Company.

“Carrying Value” means with respect to any Property (other than money), such Property’s adjusted basis for federal income tax purposes, except as follows:

- (i) The initial Carrying Value of any such Property contributed by a Member to the Company shall be the gross fair market value of such Property, as reasonably determined by the Board;
- (ii) The Carrying Values of all such Properties shall be adjusted to equal their respective gross fair market values (taking Section 7701(g) of the Code into account), as reasonably determined by the Board, at the time of any Revaluation pursuant to Section 5.02(c);
- (iii) The Carrying Value of any item of such Properties distributed to any Member shall be adjusted to equal the gross fair market value (taking Section 7701(g) of the Code into account) of such Property on the date of distribution as reasonably determined by the Board; and

(iv) The Carrying Values of such Properties shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Properties pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (vi) of the definition of “Net Income” and “Net Loss” or Section 5.04(b)(vi); provided, however, that Carrying Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv). If the Carrying Value of such Property has been determined or adjusted pursuant to subparagraph (i), (ii) or (iv), such Carrying Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Net Income and Net Loss.

“Cash Settlement” means immediately available funds in U.S. dollars in an amount equal to the Redeemed Units Equivalent.

“Centralized Partnership Audit Regime” means the centralized partnership audit rules of Sections 6221 through 6241 of the Code, and any regulations promulgated or proposed under any such Sections and any administrative guidance with respect thereto, and any similar rules under state or local tax law.

“Class A Common Stock” means Class A common stock, \$0.01 par value per share, of Pubco.

“Class B Common Stock” means Class B common stock, \$0.01 par value per share, of Pubco.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Common Unit” means the Voting Common Unit or a Nonvoting Common Unit.

“Common Unit Redemption Price” means the arithmetic average of the volume weighted average prices for a share of Class A Common Stock on the principal U.S. securities exchange or automated or electronic quotation system on which the Class A Common Stock is traded or quoted, as reported by Bloomberg, L.P. or its successor, for each of the five (5) consecutive full Trading Days ending on and including the last full Trading Day immediately prior to the Redemption Date, subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock. If the Class A Common Stock no longer trades on a securities exchange or is quoted on automated or electronic quotation system, then the Board shall determine the Common Unit Redemption Price in good faith.

“Company Minimum Gain” means “partnership minimum gain,” as defined in Treasury Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

“Control” (including the terms “controlling” and “controlled”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of such subject Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

“Covered Person” means (i) each Member or an Affiliate thereof, in each case in such capacity, (ii) each Manager and Officer, in each case in such capacity, (iii) each officer, director, manager, stockholder, member, partner, employee, representative, agent or trustee of a Member or an Affiliate thereof, in all cases in such capacity and (iv) the Partnership Representative.

“Delaware LLC Act” means the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 et seq.

“DGCL” means the Delaware General Corporation Law, 8 Del. C. §§ 1-101 et seq.

“Depreciation” means, for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Carrying Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount that bears the same ratio to such beginning Carrying Value as the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Carrying Value using any reasonable method selected by the Board.

“Designated Individual” shall be the individual, if any, designated by the Board pursuant to Section 6.01 with respect to Company Audits pursuant to the Centralized Partnership Audit Regime and shall have the meaning set forth in Treasury Regulations Section 301.6223-1(b)(3).

“Disposition Event” means any merger, consolidation or other business combination of Pubco, whether effectuated through one transaction or a series of related transactions (including a tender offer followed by a merger in which the holders of Class A Common Stock receive the same consideration per share paid in the tender offer), unless, following such transaction, all or substantially all of the holders of the voting power of all outstanding classes of common stock of Pubco and series of preferred stock of Pubco that are generally entitled to vote in the election of directors of Pubco prior to such transaction or series of transactions continue to hold a majority of the voting power of the surviving entity (or its parent) resulting from such transaction or series of transactions in substantially the same proportions as immediately prior to such transaction or series of transactions.

“Economic Members” means the Members holding Nonvoting Common Units.

“Economic Percentage Interest” means, with respect to any Economic Member, a fractional amount, expressed as a percentage: (i) the numerator of which is the aggregate number of Nonvoting Common Units owned of record by such Economic Member and (ii) the denominator of which is the aggregate number of Nonvoting Common Units issued and outstanding. The sum of the outstanding Economic Percentage Interests of all Economic Members shall at all times equal 100%.

“Effective Time” has the meaning set forth in the Master Transaction Agreement.

“Employee Matters Agreement” means the Employee Matters Agreement, dated as of the date hereof, by and among the Company and each of the parties identified therein.

“Equity Securities” means, with respect to any Person, any (i) limited liability company or partnership interests or shares of capital stock, (ii) equity, ownership, voting, profits or participation interests or (iii) similar rights or securities in such Person or any of its Subsidiaries, or any rights or securities convertible into or exchangeable for, options or other rights to acquire from such Person or any of its Subsidiaries, or obligation on the part of such Person or any of its Subsidiaries to issue, any of the foregoing.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

“Fiscal Year” means the Company’s fiscal year, which shall initially end on September 30 of each calendar year or as otherwise required by Section 706 of the Code.

“Formation Date Capital Account Balance” means, with respect to any Economic Member, the positive Capital Account balance of such Member as of immediately following the Formation Transactions, the amount of which is set forth on the Member Schedule.

“Formation Documents” means the Master Transaction Agreement, this Agreement, the Employee Matters Agreement, the Investor Rights Agreement, the Tax Matters Agreement, the Tax Receivable Agreement and the Master Services Agreement.

“Governmental Authority” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.

“Investor Rights Agreement” means the Investor Rights Agreement, dated as of the date hereof, by and between Pubco and Holdings.

“IPO” means the initial underwritten public offering of Pubco.

“IRS” means the U.S. Internal Revenue Service.

“Master Services Agreement” means the Master Services Agreement, dated as of the date hereof, by and among the Company and each of the other parties identified therein.

“Member” means any Person named as a Member of the Company on the Member Schedule, as the same may be amended from time to time to reflect any Person admitted as an Additional Member or a Substitute Member, for so long as such Person continues to be a Member of the Company.

“Member Nonrecourse Debt” has the same meaning as the term “partner nonrecourse debt” in Treasury Regulations Section 1.704-2(b)(4).

“Member Nonrecourse Debt Minimum Gain” means an amount with respect to each “partner nonrecourse debt” (as defined in Treasury Regulations Section 1.704-2(b)(4)) equal to the Company Minimum Gain that would result if such partner nonrecourse debt were treated as a nonrecourse liability (as defined in Treasury Regulations Section 1.752-1(a)(2)) determined in accordance with Treasury Regulations Section 1.704-2(i)(3).

“Member Nonrecourse Deductions” has the same meaning as the term “partner nonrecourse deductions” in Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

“Net Income” and “Net Loss” mean, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such Fiscal Year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition of “Net Income” and “Net Loss” shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) of the Code expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition of “Net Income” and “Net Loss,” shall be treated as deductible items;

(iii) In the event the Carrying Value of any Company asset is adjusted pursuant to subparagraphs (ii) or (iii) of the definition of “Carrying Value,” the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Carrying Value of the asset) or an item of loss (if the adjustment decreases the Carrying Value of the asset) from the disposition of such asset and shall be taken into account, immediately prior to the event giving rise to such adjustment, for purposes of computing Net Income or Net Loss;

(iv) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Carrying Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Carrying Value;

(v) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of Depreciation;

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member’s interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Net Income or Net Loss; and

(vii) Notwithstanding any other provision of this definition, any items that are specially allocated pursuant to Section 5.04(b), Section 5.04(c) and Section 5.04(d) shall not be taken into account in computing Net Income or Net Loss.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 5.04(b), Section 5.04(c) and Section 5.04(d) shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above.

“Non-Pubco Member” means any Member that is not a Pubco Member.

“Nonrecourse Deductions” has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

“Nonvoting Common Units” means the Nonvoting Common Units of the Company, having the rights, privileges and preferences set forth herein.

“Partnership Representative” means the entity or individual designated by the Board in accordance with Section 6.01 with respect to partnership audits and proceedings pursuant to the Centralized Partnership Audit Regime and shall have the meaning set forth in Section 6223(a) of the Code. Unless otherwise stated, all references to Partnership Representative also shall apply to the Designated Individual if the appointment of a Designated Individual is required.

“Person” means any individual, firm, corporation, partnership, limited liability company, trust, estate, joint venture, governmental authority or other entity.

“Prime Rate” means the rate that JPMorgan Chase Bank, National Association (or any successor thereto or other major money center commercial bank agreed to by the Board) announces from time to time as its prime lending rate, as in effect from time to time.

“Property” means an interest of any kind in any real, personal or intellectual (or mixed) property, including cash, and any improvements thereto, and shall include both tangible and intangible property.

“Pubco Certificate of Incorporation” means the Amended and Restated Certificate of Incorporation of Pubco, as it may be amended from time to time.

“Pubco Common Stock” means all classes and series of common stock of Pubco, including the Class A Common Stock and the Class B Common Stock.

“Pubco Member” means (i) Pubco and (ii) any Subsidiary of Pubco (other than the Company and its Subsidiaries) that is a Member.

“Redeemed Units Equivalent” means the product of (a) the Share Settlement and (b) the Common Unit Redemption Price.

“Regulatory Agency” means the SEC, the Financial Industry Regulatory Authority, any non-U.S. regulatory agency and any other regulatory authority or body (including any state or provincial securities authority and any self-regulatory organization) with jurisdiction over the Company or any of its Subsidiaries.

“Relative Percentage Interest” means, with respect to any Member relative to another Member or Members, a fractional amount, expressed as a percentage, the numerator of which is the aggregate number of Units in the applicable class(es) owned of record by such Member; and the denominator of which is (x) the aggregate number of Units in the applicable class(es) owned of record by such Member plus (y) the aggregate number of Units in the applicable class(es) owned of record by such other Member or Members.

“SEC” means the United States Securities and Exchange Commission.

“Share Settlement” means a number of shares of Class A Common Stock equal to the number of Redeemed Units, subject to adjustment as set forth in Section 9.01(e).

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of Equity Securities or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

“Substitute Member” means any Person admitted as a Member of the Company pursuant to Section 3.02 in connection with the Transfer of then-existing Units to such Person.

“Tax Distribution” means a distribution made by the Company pursuant to Section 5.03(e).

“Tax Matters Agreement” means the Tax Matters Agreement, dated as of the date hereof, by and among the Company and each of the other parties identified therein.

“Tax Rate” means the highest marginal U.S. federal and state tax rate applicable to corporations (or, if appropriate, to individuals) (taking into account the deductibility of state and local taxes) determined from time to time by the Board.

“Tax Receivable Agreement” means the Tax Receivable Agreement, dated as of the date hereof, by and among Pubco and each of the other parties identified therein.

“Trading Day” means a day on which the principal U.S. securities exchange or automated or electronic quoting system on which the Class A Common Stock is traded or quoted is open for the transaction of business (unless such trading shall have been suspended for the entire day).

“Transfer” means any sale, assignment, transfer, exchange, gift, bequest, pledge, hypothecation or other disposition or encumbrance, direct or indirect, in whole or in part, by operation of law or otherwise, and shall include all matters deemed to constitute a Transfer under Article VIII. The terms “Transferred,” “Transferring,” “Transferor,” “Transferee” and “Transferable” have meanings correlative to the foregoing.

“Treasury Regulations” mean the regulations promulgated under the Code, as amended from time to time.

“Units” means Common Units or any other class of limited liability interests in the Company designated by the Company after the date hereof in accordance with this Agreement; provided that any type, class or series of Units shall have the designations, preferences and/or special rights set forth or referenced in this Agreement, and the membership interests of the Company represented by such type, class or series of Units shall be determined in accordance with such designations, preferences and/or special rights.

“Voting Common Unit” means the Voting Common Unit of the Company, having the rights, privileges and preferences set forth herein.

“Voting Member” means Pubco, so long as it is the holder of the Voting Common Unit, or any successor holder of the Voting Common Unit.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Audit	Section 6.01(b)
Board	Section 7.01
Company	Preamble
Confidential Information	Section 12.11(b)
Contribution Notice	Section 9.01(b)
Controlled Entities	Section 10.02(e)
Dissolution Event	Section 11.01(c)
Economic Pubco Security	Section 4.01(a)
e-mail	Section 12.03
Existing LLC Agreement	Recitals
Expenses	Section 10.02(e)
Formation Transactions	Recitals
GAAP	Section 3.03(b)
Holdings	Preamble
Indemnification Sources	Section 10.02(e)
Indemnitee-Related Entities	Section 10.02(e)(i)
Jointly Indemnifiable Claims	Section 10.02(e)(ii)
Manager	Section 7.01
Master Transaction Agreement	Recitals
Member Parties	Section 12.11(a)
Member Schedule	Section 3.01(a)
Non-Affiliated Transferee	Section 8.04
Officers	Section 7.10(a)
Process Agent	Section 12.05(b)
Pubco	Preamble
Pubco Offer	Section 9.01(f)
Redeemed Units	Section 9.01(a)
Redeeming Member	Section 9.01(a)
Redemption	Section 9.01(a)
Redemption Date	Section 9.01(a)
Redemption Notice	Section 9.01(a)
Redemption Right	Section 9.01(a)
Regulatory Allocations	Section 5.04(c)
Retraction Notice	Section 9.01(b)
Revaluation	Section 5.02(c)
Transferor Member	Section 5.02(b)
Withholding Advances	Section 5.06(b)

Section 1.02. Other Definitional and Interpretative Provisions. The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement unless otherwise specified. All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. Any singular term in this

Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “law,” “laws” or to a particular statute or law shall be deemed also to include any Applicable Law. As used in this Agreement, all references to “majority in interest” and phrases of similar import shall be deemed to refer to such percentage or fraction of interest based on the Relative Percentage Interests of the Members subject to such determination. Unless otherwise expressly provided herein, when any approval, consent or other matter requires any action or approval of any group of Members, including any holders of any class of Units, such approval, consent or other matter shall require the approval of a majority in interest of such group of Members. Except to the extent otherwise expressly provided herein, all references to any Member shall be deemed to refer solely to such Person in its capacity as such Member and not in any other capacity.

ARTICLE II. THE COMPANY

Section 2.01. Formation. The Company was formed upon the filing of the certificate of formation of the Company with the Secretary of State of the State of Delaware on November 27, 2013. Any authorized officer or representative, as an “authorized person” within the meaning of the Delaware LLC Act, shall file and record any amendments and/or restatements to the certificate of formation of the Company and such other certificates and documents (and any amendments or restatements thereof) as may be required under the laws of the State of Delaware and of any other jurisdiction in which the Company may conduct business. Any such authorized officer or representative shall, on request, provide any Member with copies of each such document as filed and recorded. The Members hereby agree that the Company and its Subsidiaries shall be governed by the terms and conditions of this Agreement and, except as provided herein, the Delaware LLC Act.

Section 2.02. Name. The name of the Company shall be BellRing Brands, LLC; provided that the Board may change the name of the Company to such other name as the Board shall determine in its sole discretion, and the Board shall have the authority to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by Applicable Law or as, in the reasonable judgment of the Board, may be necessary or advisable to effect such change.

Section 2.03. Term. The Company shall have perpetual existence unless sooner dissolved and its affairs wound up as provided in Article XI.

Section 2.04. Registered Agent and Registered Office. The name of the registered agent of the Company for service of process on the Company in the State of Delaware shall be Corporation Service Company, and the address of such registered agent and the address of the registered office of the Company in the State of Delaware shall be 251 Little Falls Drive in the City of Wilmington, County of New Castle, Delaware 19808. Such office and such agent may be changed to such place within the State of Delaware and any successor registered agent, respectively, as may be determined from time to time by the Board in accordance with the Delaware LLC Act.

Section 2.05. Purposes. The Company has been formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, to carry on any lawful act or activities for which limited liability companies may be organized under the Delaware LLC Act.

Section 2.06. Powers of the Company. The Company shall have the power and authority to take any and all actions necessary, appropriate or advisable to or for the furtherance of the purposes set forth in Section 2.05.

Section 2.07. Partnership Tax Status. The Members intend that the Company shall be treated as a partnership for federal, state and local income tax purposes to the extent such treatment is available, and agree to take (or refrain from taking) such actions as may be necessary to receive and maintain such treatment and refrain from taking any actions inconsistent thereof. The Members acknowledge and agree that any Subsidiary of the Company that is classified as a partnership or disregarded entity at the time of IPO will not be converted to entity classified as a C corporation for federal income tax purposes.

Section 2.08. Regulation of Internal Affairs. The internal affairs of the Company and the conduct of its business shall be regulated by this Agreement, and to the extent not provided for herein, shall be determined by the Board. The Board shall be responsible for the oversight of the Company's operations and overall performance and strategy, while the management of the day-to-day operations of the business of the Company and the execution of business strategy shall be the responsibility of the Officers and employees of the Company and its Subsidiaries.

Section 2.09. Ownership of Property. Legal title to all Property conveyed to, or held by, the Company or its Subsidiaries shall reside in the Company or its Subsidiaries and shall be conveyed only in the name of the Company or its Subsidiaries, and no Member or any other Person, individually, shall have any ownership of such Property.

Section 2.10. Subsidiaries. The Company shall cause the business and affairs of each of the Subsidiaries to be managed by the Board and the Officers and employees of the Company in accordance with and in a manner consistent with this Agreement.

ARTICLE III. UNITS; MEMBERS; BOOKS AND RECORDS; REPORTS

Section 3.01. Units; Admission of Members.

(a) Immediately after the Effective Time, pursuant to the Master Transaction Agreement, (i) the Company hereby establishes a new class of Common Units consisting of one Voting Common Unit having the terms set forth herein, and issues such Voting Common Unit to Pubco as set forth on Schedule A (the "Member Schedule") and (ii) the Company hereby establishes a new class of Nonvoting Common Units having the terms set forth herein. All limited liability company interests in the Company outstanding as of immediately prior to the Effective Time, all of which are held by Holdings, shall be reclassified into 97,474,180 Nonvoting Common Units, and the Company hereby issues 39,428,571 Nonvoting Common Units to Pubco, in each case, as set forth on the Member Schedule. The Member Schedule shall be maintained by the Officers on behalf of the Company in accordance with this Agreement, and the Board shall promptly deliver a copy of the Member Schedule to any Member that so requests. When any Units or other Equity Securities of the Company are issued, repurchased, redeemed, converted or Transferred in accordance with this Agreement, the Member Schedule shall be amended by the Officers to reflect such issuance, repurchase, redemption or Transfer, the admission of Additional Members or Substitute Members and the resulting Economic Percentage Interest of each Member. Following the date hereof, no Person shall be admitted as a Member and no additional Units shall be issued except as expressly provided herein.

(b) The Board may cause the Company to authorize and issue from time to time such additional Units or other Equity Securities of any type, class or series and having the designations, preferences and/or special rights as may be determined the Board. Such Units or other Equity Securities may be issued pursuant to such agreements as the Board shall approve. When any such additional Units or other Equity Securities are authorized and issued, the Member Schedule and this Agreement shall be amended by the Board to reflect such additional issuances.

Section 3.02. Substitute Members and Additional Members.

(a) No Transferee of any Units or Person to whom any Units are issued pursuant to this Agreement shall be admitted as a Member hereunder or acquire any rights hereunder, including any voting rights or the right to receive distributions and allocations in respect of the Transferred or issued Units, as applicable, unless (i) such Units are Transferred or issued in compliance with the provisions of this Agreement (including Article VIII) and (ii) such Transferee or recipient shall have executed and delivered to the Company such instruments as the Board deems necessary or desirable, in its reasonable discretion, to effectuate the admission of such Transferee or recipient as a Member and to confirm the agreement of such Transferee or recipient to be bound by all of the terms and provisions of this Agreement; provided, however, that Transfers which are permitted pursuant to Section 8.02(c), Section 8.02(d), Section 8.02(e) and Section 8.02(f) shall not be subject to clause (ii) of this sentence. Upon complying with the immediately preceding sentence, without the need for any further action of any Person, a Transferee or recipient shall be deemed admitted to the Company as a Member. A Substitute Member shall enjoy the same rights, and be subject to the same obligations, as the Transferor; provided that such Transferor shall not be relieved of any obligation or liability hereunder arising prior to the consummation of such Transfer but shall be relieved of all future obligations with respect to the Units so Transferred. As promptly as practicable after the admission of any Person as a Member, the books and records of the Company shall be changed to reflect such admission of a Substitute Member or Additional Member. In the event of any admission of a Substitute Member or Additional Member pursuant to this Section 3.02(a), this Agreement shall be deemed amended to reflect such admission, and any formal amendment of this Agreement (including the Member Schedule) in connection therewith shall only require execution by the Company and such Substitute Member or Additional Member, as applicable, to be effective.

(b) If a Member shall Transfer all (but not less than all) of its Units, the Member shall thereupon cease to be a Member of the Company.

Section 3.03. Accounting and Tax Information.

(a) Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Board or the Officers of the Company in accordance with this Agreement and Applicable Law. In making such decisions, the Board and the Officers of the Company may rely upon the advice of the independent accountants of the Company.

(b) Records and Accounting Maintained. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in all material respects in accordance with United States generally accepted accounting principles as in effect from time to time ("GAAP") and in accordance with Sections 6.1 and 6.2 of the Master Transaction Agreement. The Fiscal Year of the Company shall be used for financial reporting and for federal income tax purposes.

(c) Financial Reports. To the extent required under Applicable Law, the Formation Documents or such other agreements by which the Company may be bound from time to time or as otherwise determined by the Board, the books and records of the Company shall be audited as of the end of each Fiscal Year by an accounting firm selected by the Board.

(d) Tax Returns.

(i) The Company shall timely prepare, or cause to be prepared by an accounting firm selected by the Board, all federal, state, local and foreign tax returns (including information returns) of the Company and its Subsidiaries, which may be required by a jurisdiction in which the Company and its Subsidiaries operate or conduct business for each year or period for which such returns are required to be filed and shall cause such returns to be timely filed. Upon request of any Member, the Company shall furnish to such Member a copy of each such tax return;

(ii) The Company shall furnish to each Member (a) as soon as reasonably practical after the end of each Fiscal Year, all information concerning the Company and its Subsidiaries required for the preparation of tax returns of such Members (or any beneficial owner(s) of such Member), including a report (including Schedule K-1) indicating each Member's share of the Company's taxable income, gain, credits, losses and deductions for such year, in sufficient detail to enable such Member to prepare its federal, state and other tax returns and (b) as soon as reasonably possible after a request by such Member, such other information concerning the Company and its Subsidiaries that is reasonably requested by such Member for compliance with its tax obligations (or the tax obligations of any beneficial owner(s) of such Member) or for tax planning purposes; and

(iii) So long as it holds at least a 5% Economic Percentage Interest, Holdings shall be entitled to review and comment on any tax returns or reports to be prepared pursuant to this Section 3.03(d) at least sixty days prior to the due date for the applicable tax return or report (including extensions). Holdings shall notify the Company no later than thirty days after receipt of a tax return or report of any changes recommended thereby to such return or report. The Company shall consider in good faith all reasonable comments of Holdings to such tax returns or reports. If the Company does not accept any such comment, the Company shall notify Holdings, as applicable, of that fact. If within five days of such notification, Holdings requests in writing a review of a rejected comment, the Company shall cause its regular tax advisors to review the comment and consult with Holdings. The determination of the tax advisors following such review and consultation shall definitively determine the position taken on the Company's tax return or report.

(e) Inconsistent Positions. No Member shall take a position on its income tax return with respect to any item of Company income, gain, deduction, loss or credit that is different from the position taken on the Company's income tax return with respect to such item unless such Member notifies the Company of the different position the Member desires to take and provides a tax opinion from a nationally recognized advisor to the effect that the position adopted by the Company is not supported by substantial authority.

Section 3.04. Books and Records. The Company shall keep full and accurate books of account and other records of the Company at its principal executive office or at such other location determined by the Board. No Member (other than, so long as each holds an interest in the Company, Pubco and Holdings) shall have any right to inspect the books and records of the Company or any of its Subsidiaries.

ARTICLE IV.
PUBCO OWNERSHIP; RESTRICTIONS ON PUBCO STOCK

Section 4.01. Pubco Ownership.

(a) If at any time Pubco issues a share of Class A Common Stock or any other Equity Security of Pubco entitled to any economic rights (including, without limitation, in the IPO or pursuant to equity compensation plans or outstanding options, rights, warrants or other awards thereunder or pursuant to Share Settlements of Redemptions under Article IX) (an “Economic Pubco Security”) with regard thereto (not including, for the avoidance of doubt, the Class B Common Stock or other Equity Security of Pubco not entitled to any economic rights with respect thereto), (i) the Company shall issue to Pubco one Nonvoting Common Unit (if Pubco issues a share of Class A Common Stock) or such other Equity Security of the Company (if Pubco issues an Economic Pubco Security other than Class A Common Stock) corresponding to the Economic Pubco Security, and with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Economic Pubco Security and (ii) the net proceeds received by Pubco with respect to the corresponding Economic Pubco Security, if any, shall be concurrently contributed to the Company; provided, however, that if Pubco issues any Economic Pubco Securities, some or all of the net proceeds of which are to be used to fund expenses or other obligations of Pubco for which Pubco would be permitted a distribution pursuant to Section 5.03(c), then Pubco shall not be required to transfer such net proceeds to the Company which are used or will be used to fund such expenses or obligations (but the Capital Account of Pubco shall be increased by the amount of such net proceeds not contributed to the Company), and provided, further, that if Pubco issues any shares of Class A Common Stock in order to purchase or fund the purchase from a Non-Pubco Member of a number of Nonvoting Common Units or to purchase or fund the purchase of shares of Class A Common Stock, in each case equal to the number of shares of Class A Common Stock issued (including, in each case, by way of exchange), then the Company shall not issue any new Nonvoting Common Units in connection therewith and Pubco shall not be required to transfer such net proceeds to the Company (it being understood that such net proceeds shall instead be transferred to the Person from which such purchase was made).

(b) Notwithstanding Section 4.01(a), this Article IV shall not apply (i) to the issuance and distribution to holders of shares of Pubco Common Stock of rights to purchase Equity Securities of Pubco under a “poison pill” or similar stockholders rights plan (it being understood that upon a Redemption, such Class A Common Stock will be issued together with a corresponding right) or (ii) to the issuance under Pubco’s employee benefit plans or directors’ compensation plan of any warrants, options or other rights to acquire Equity Securities of Pubco or rights or property that may be converted into or settled in Equity Securities of Pubco, but shall in each of the foregoing cases apply to the issuance of Equity Securities of Pubco in connection with the exercise or settlement of such rights, warrants, options or other rights or property.

Section 4.02. Restrictions on Pubco Common Stock.

(a) Except as otherwise determined by the Board in accordance with Section 4.02(d), (i) the Company may not issue any additional Nonvoting Common Units to Pubco or any of its Subsidiaries unless substantially simultaneously therewith, Pubco or such Subsidiary issues or sells an equal number of shares of Class A Common Stock to another Person and (ii) the Company may not issue any other Equity Securities of the Company to Pubco or any of its Subsidiaries unless substantially simultaneously therewith, Pubco or such Subsidiary issues or sells, to another Person, an equal number of shares of a new class or series of Equity Securities of Pubco or such Subsidiary with substantially the same rights to dividends and distributions (including dividends and distributions upon liquidation) and other economic rights as those of such Equity Securities of the Company.

(b) Except as otherwise determined by the Board in accordance with Section 4.02(d), (i) Pubco or any of its Subsidiaries may not redeem, repurchase or otherwise acquire any shares of Class A Common Stock unless substantially simultaneously therewith the Company redeems, repurchases or otherwise acquires from Pubco an equal number of Nonvoting Common Units for the same price per security (or, if Pubco uses funds received from prior distributions from the Company or other funds available to Pubco that were not provided by the Company or the net proceeds from an issuance of shares of Class A Common Stock to fund such redemption, repurchase or acquisition, then the Company shall cancel an equal number of Nonvoting Common Units for no consideration) and (ii) Pubco or any of its Subsidiaries may not redeem or repurchase any other Equity Securities of Pubco unless substantially simultaneously therewith, the Company redeems or repurchases from Pubco an equal number of Equity Securities of the Company of a corresponding class or series with substantially the same rights to dividends and distributions (including dividends and distributions upon liquidation) or other economic rights as those of such Equity Securities of Pubco for the same price per security (or, if Pubco uses funds received from distributions from the Company or the net proceeds from an issuance of Equity Securities other than Class A Common Stock to fund such redemption, repurchase or acquisition, then the Company shall cancel an equal number of its corresponding Equity Securities for no consideration). Except as otherwise determined by the Board in accordance with Section 4.02(d): (x) the Company may not redeem, repurchase or otherwise acquire Nonvoting Common Units from Pubco or any of its Subsidiaries unless substantially simultaneously therewith Pubco or such Subsidiary redeems, repurchases or otherwise acquires an equal number of shares of Class A Common Stock for the same price per security from holders thereof (except that if the Company cancels Nonvoting Common Units for no consideration as described in Section 4.02(b)(i), then the price per security need not be the same) and (y) the Company may not redeem, repurchase or otherwise acquire any other Equity Securities of the Company from Pubco or any of its Subsidiaries unless substantially simultaneously therewith Pubco or such Subsidiary redeems, repurchases or otherwise acquires for the same price per security an equal number of Equity Securities of Pubco of a corresponding class or series with substantially the same rights to dividends and distributions (including dividends and distributions upon liquidation) and other economic rights as those of such Equity Securities of Pubco (except that if the Company cancels Equity Securities for no consideration as described in Section 4.02(b)(ii), then the price per security need not be the same). Notwithstanding the immediately preceding sentence, if any consideration payable to Pubco in connection with the exercise of options or warrants issued for shares of Class A Common Stock consists (in whole or in part) of shares or other Equity Securities of Pubco (including, for the avoidance of doubt, in connection with the cashless or net exercise of an option or warrant), then the redemption or repurchase of the corresponding Nonvoting Common Units or other Equity Securities of the Company shall be effectuated in a substantially equivalent manner (except if the Company cancels Nonvoting Common Units or other Equity Securities for no consideration as described in this Section 4.02(b)).

(c) The Company shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding Nonvoting Common Units unless accompanied by a substantively identical subdivision or combination, as applicable, of the outstanding Class A Common Stock, with corresponding changes made with respect to any other exchangeable or convertible securities. Pubco shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding Class A Common Stock unless accompanied by a substantively identical subdivision or combination of the outstanding Nonvoting Common Units, with corresponding changes made with respect to any other exchangeable or convertible securities.

(d) Notwithstanding anything to the contrary in this Article IV:

(i) if at any time the Board shall determine that any debt instrument of Pubco, the Company or its Subsidiaries shall not permit Pubco or the Company to comply with the provisions of Section 4.02(a) or Section 4.02(b) in connection with the issuance, redemption or repurchase of any shares of Class A Common Stock or other Equity Securities of Pubco or any of its Subsidiaries or any Units or other Equity Securities of the Company, then the Board may in good faith implement an economically equivalent alternative arrangement without complying with such provisions; provided that such arrangement shall also be subject to the prior written consent (not to be unreasonably withheld) of Holdings, so long as it holds at least a 10% Economic Percentage Interest; and

(ii) if (x) Pubco incurs any indebtedness and desires to transfer the proceeds of such indebtedness to the Company and (y) Pubco is unable to lend the proceeds of such indebtedness to the Company on an equivalent basis because of restrictions in any debt instrument of Pubco, the Company or its Subsidiaries, then notwithstanding Section 4.02(a) or Section 4.02(b), the Board may in good faith implement an economically equivalent alternative arrangement in connection with the transfer of proceeds to the Company using non-participating preferred Equity Securities of the Company without complying with such provisions; provided that such arrangement shall also be subject to the prior written consent (not to be unreasonably withheld) of Holdings, so long as it holds at least a 10% Economic Percentage Interest.

ARTICLE V.

CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; DISTRIBUTIONS; ALLOCATIONS

Section 5.01. Capital Contributions.

(a) From and after the date hereof, no Member shall have any obligation to the Company, to any other Member or to any creditor of the Company to make any further Capital Contribution, except as expressly provided in Section 4.01(a) or Section 9.02.

(b) Except as expressly provided herein, no Member, in its capacity as a Member, shall have the right to receive any cash or any other property of the Company.

Section 5.02. Capital Accounts.

(a) Maintenance of Capital Accounts. The Company shall maintain a Capital Account for each Economic Member on the books of the Company in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) and, to the extent consistent with such provisions, the following provisions:

(i) Each Economic Member listed on the Member Schedule shall be credited with the Formation Date Capital Account Balance set forth on the Member Schedule. The Member Schedule shall be amended after the closing of the IPO and from time to time (without the consent or approval of any Member) to reflect adjustments to the Economic Members' Capital Accounts made in accordance with Section 5.02(a)(ii), Section 5.02(a)(iii), Section 5.02(a)(iv), Section 5.02(c) or otherwise.

(ii) To each Economic Member's Capital Account there shall be credited: (A) such Economic Member's Capital Contributions (without duplication for any amounts credited to such Member's Capital Account under Section 5.02(a)(i)), (B) such Member's distributive share of Net Income and any item in the nature of income or gain that is allocated pursuant to Section 5.04 and (C) the amount of any Company liabilities assumed by such Member or that are secured by any Property distributed to such Member.

(iii) To each Economic Member's Capital Account there shall be debited: (A) the amount of money and the Carrying Value of any Property distributed to such Member pursuant to any provision of this Agreement, (B) such Member's distributive share of Net Loss and any items in the nature of expenses or losses that are allocated to such Member pursuant to Section 5.04 and (C) the amount of any liabilities of such Member assumed by the Company or that are secured by any Property contributed by such Member to the Company.

(iv) In determining the amount of any liability for purposes of Section 5.02(a)(ii) and Section 5.02(a)(iii) there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and the Treasury Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event that the Board shall reasonably determine that it is prudent to modify the manner in which the Capital Accounts or any debits or credits thereto are maintained (including debits or credits relating to liabilities that are secured by contributed or distributed Property or that are assumed by the Company or the Members), the Board may make such modification so long as such modification will not have any effect on the amounts distributed to any Person pursuant to Article XI upon the dissolution of the Company. The Board also shall (i) make any adjustments that are necessary or appropriate to maintain equality between Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

(b) Succession to Capital Accounts. In the event any Person becomes a Substitute Member in accordance with the provisions of this Agreement, such Substitute Member shall succeed to the Capital Account of the former Member (the "Transferor Member") to the extent such Capital Account relates to the Transferred Units.

(c) Adjustments of Capital Accounts. The Company shall revalue the Capital Accounts of the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) (a "Revaluation") at the following times: (i) immediately prior to the contribution of more than a *de minimis* amount of money or other property to the Company by a new or existing Member as consideration for one or more Units; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of property in respect of one or more Units; (iii) the issuance by the Company of more than a *de minimis* amount of Units as consideration for the provision of services to or for the benefit of the Company (as described in Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(5)(iii)) and (iv) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i), (ii) and (iii) above shall be made only if the Board reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interest of the Members.

(d) Withdrawal/Distribution Limitations. No Member shall be entitled to withdraw capital or receive distributions except as specifically provided herein. A Member shall have no obligation to the Company, to any other Member or to any creditor of the Company to restore any negative balance in the Capital Account of such Member. Except as expressly provided elsewhere herein, no interest shall be paid on the balance in any Member's Capital Account.

(e) Per Unit Determination. Whenever it is necessary for purposes of this Agreement to determine a Member's Capital Account on a per Unit basis, such amount shall be determined by dividing the Capital Account of such Member attributable to the applicable class of Units held of record by such Member by the number of Units of such class held of record by such Member.

Section 5.03. Amounts and Priority of Distributions.

(a) Distributions Generally. Except as otherwise provided in Section 11.02, distributions shall be made to the Economic Members as set forth in this Section 5.03, at such times and in such amounts as the Board, in its sole discretion, shall determine; provided, however, that no distribution will be made hereunder to the extent such distribution would have the effect of rendering the Company insolvent. For purposes of the foregoing sentence, “insolvent” means the inability of the Company to pay its debts as they become due in the usual course of business. For the avoidance of doubt, the Voting Member shall not be entitled to receive any distributions hereunder in its capacity as Voting Member.

(b) Distributions to the Members. Subject to Section 5.03(e), at such times and in such amounts as the Board, in its sole discretion, shall determine, distributions shall be made to the Economic Members in proportion to their respective Economic Percentage Interests.

(c) Pubco Distributions. Notwithstanding the provisions of Section 5.03(b), the Board, in its sole discretion, may authorize that cash be paid to Pubco (which payment shall be made without pro rata distributions to the other Members) in exchange for the redemption, repurchase or other acquisition of Nonvoting Common Units held by Pubco to the extent that such cash payment is used to redeem, repurchase or otherwise acquire an equal number of shares of Class A Common Stock in accordance with Section 4.02(b). For the avoidance of doubt, distributions made under this Section 5.03(c) may not be used to pay or facilitate dividends or distributions on the Pubco Common Stock and must be used solely for the express purpose set forth under this Section 5.03(c).

(d) Distributions in Kind. Any distributions to the Economic Members in kind shall be made at such times and in such amounts as the Board, in its sole discretion, shall determine based on their fair market value, as determined by the Board, in the same proportions as if distributed in accordance with Section 5.03(b), with all Economic Members participating in proportion to their respective Economic Percentage Interests. If cash and property are to be distributed in kind simultaneously, the Company shall distribute such cash and property in kind in the same proportion to each Economic Member.

(e) Tax Distributions. Notwithstanding any other provision of this Section 5.03 to the contrary, to the extent permitted by Applicable Law and consistent with the Company’s obligations to its creditors as reasonably determined by the Board, the Company, subject to availability of sufficient cash, shall make quarterly cash distributions by wire transfer of immediately available funds pursuant to this Section 5.03(e) to each Economic Member pro rata, in accordance with the Member’s Economic Percentage Interest, at least two Business Days prior to the date on which any U.S. federal corporate estimated tax payments are due, until each Member has received an amount at least equal to its Assumed Tax Liability, if any, less the amounts previously distributed under Section 5.03 in the then-current taxable year (or portion thereof); provided that none of the Company, the Board or any Manager, officer or employee of the Company shall have any liability to any Member in connection with any underpayment of estimated taxes, so long as cash distributions are made in accordance with this Section 5.03(e) and the Assumed Tax Liability is determined as provided in the definition of Assumed Tax Liability. For the avoidance of doubt, Tax Distributions shall be made to all Members on a pro rata basis in accordance with their Economic Percentage Interests, notwithstanding the differing actual tax liabilities of such Members. If, on a Tax Distribution date, there are insufficient funds on hand to distribute to the Members the full amount of the Tax Distributions to which such Members are

otherwise entitled, Tax Distributions pursuant to this Section 5.03(e) shall be made to the Members to the extent of available funds in proportion to the amounts that would be otherwise distributable under this Section 5.03(e), and the Company shall make future Tax Distributions as soon as funds become available sufficient to pay the remaining portion of the Tax Distributions to which such Members are otherwise entitled.

(f) Assignment. Holdings shall have the right to assign to any Transferee of Nonvoting Common Units, pursuant to a Transfer made in compliance with this Agreement, the right to receive any portion of the amounts distributable or otherwise payable to Holdings pursuant to Section 5.03(b).

Section 5.04. Allocations.

(a) Net Income and Net Loss. Except as otherwise provided in this Agreement, and after giving effect to the special allocations set forth in Section 5.04(b), Section 5.04(c) and Section 5.04(d), Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of the Company shall be allocated among the Economic Members in a manner such that the Capital Account of each Economic Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the distributions that would be made to such Economic Member pursuant to Section 5.03(b) if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Carrying Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability), and the net assets of the Company were distributed, in accordance with Section 5.03(b), to the Economic Members immediately after making such allocation minus (ii) such Economic Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets.

(b) Special Allocations. The following special allocations shall be made in the following order:

(i) Minimum Gain Chargeback. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this Article V, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Economic Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Economic Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the immediately preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Economic Member pursuant thereto, and shall be calculated so as to result in the smallest and non-duplicative minimum gain chargebacks. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f)(6) and 1.704-2(j)(2). This Section 5.04(b)(i) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Member Minimum Gain Chargeback. Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article V, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Economic Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Economic Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4).

Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Economic Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 5.04(b)(ii) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. In the event any Economic Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Economic Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Economic Member as promptly as possible; provided that an allocation pursuant to this Section 5.04(b)(iii) shall be made only if and to the extent that the Economic Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article V have been tentatively made as if this Section 5.04(b)(iii) were not in this Agreement.

(iv) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in a manner determined by the Board consistent with Treasury Regulations Sections 1.704-2(b) and 1.704-2(c).

(v) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Economic Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(j)(1).

(vi) Section 754 Adjustments. (A) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of an Economic Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such asset) or loss (if the adjustment decreases the basis of such asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income and Net Loss. (B) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulations Sections 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to an Economic Member in complete liquidation of such Economic Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to such Economic Members in accordance with their interests in the Company in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Economic Member to whom such distribution was made in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(c) Curative Allocations. The allocations set forth in Section 5.04(b)(i) through Section 5.04(b)(vi) and Section 5.04(d) (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Economic Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 5.04(c). Therefore, notwithstanding any other provision of this Article V (other than the Regulatory Allocations), the Board shall make such offsetting special allocations of Company income,

gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Economic Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Economic Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Section 5.04(a).

(d) Loss Limitation. Net Loss (or individual items of loss or deduction) allocated pursuant to Section 5.04 shall not exceed the maximum amount of Net Loss (or individual items of loss or deduction) that can be allocated without causing any Economic Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Economic Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Net Loss (or individual items of loss or deduction) pursuant to Section 5.04, the limitation set forth in this Section 5.04(d) shall be applied on a Member by Member basis and Net Loss (or individual items of loss or deduction) not allocable to any Economic Member as a result of such limitation shall be allocated to the other Economic Members in accordance with the positive balances in such Economic Members' Capital Accounts so as to allocate the maximum permissible Net Loss to each Economic Member under Treasury Regulations Section 1.704-1(b)(2)(ii)(d). Any reallocation of Net Loss pursuant to this Section 5.04(d) shall be subject to chargeback pursuant to the curative allocation provision of Section 5.04(c).

Section 5.05. Other Allocation Rules.

(a) Interim Allocations Due to Percentage Adjustment. If an Economic Percentage Interest is the subject of a Transfer or the Economic Members' interests in the Company change pursuant to the terms of this Agreement during any Fiscal Year, the amount of Net Income and Net Loss (or items thereof) to be allocated to the Economic Members for such entire Fiscal Year shall be allocated to the portion of such Fiscal Year which precedes the date of such Transfer or change (and if there shall have been a prior Transfer or change in such Fiscal Year, which commences on the date of such prior Transfer or change) and to the portion of such Fiscal Year which occurs on and after the date of such Transfer or change (and if there shall be a subsequent Transfer or change in such Fiscal Year, which precedes the date of such subsequent Transfer or change) in accordance with Section 706 of the Code and the Treasury Regulations promulgated thereunder as determined by the Board and the amounts of the items so allocated to each such portion shall be credited or charged to the Members, with the consent of Holdings (so long as it remains a Member), in accordance with Section 5.04 as in effect during each such portion of the Fiscal Year in question.

(b) Tax Allocations. In accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder, income, gain, loss and deduction with respect to any Property contributed to the capital of the Company and with respect to reverse Code Section 704(c) allocations described in Treasury Regulations Section 1.704-3(a)(6) shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Carrying Value or its Carrying Value determined pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) (computed in accordance with the definition of Carrying Value) using the traditional allocation method under Treasury Regulations Section 1.704-3(b). The Company shall make curative allocations of the resulting tax gain or loss from the sale or disposition of any Property in a manner that is intended to offset the effect of the cumulative amount of any "ceiling rule limitations" with respect to allocations of depreciation or amortization deductions in respect of such Property in the current and all prior Fiscal Years, as outlined in Treasury Regulations Section 1.704-3(c)(3).

(c) Any elections or other decisions relating to such allocations shall be made by the Board in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5.05(b), Section 704(c) of the Code (and the principles thereof) and Treasury Regulations Section 1.704-1(b)(4)(i) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Economic Member's Capital Account or share of Net Income, Net Loss, other items or distributions pursuant to any provision of this Agreement. To the extent permissible under Applicable Law, the Board shall allocate the "nonrecourse liabilities" of the Company for purposes of Treasury Regulations Section 1.752-3(a) in a manner that avoids the recognition by the Economic Members of gain pursuant to Section 731(a) of the Code or reduces the aggregate recognition of such gain by the Economic Members for the relevant Fiscal Year, provided that such allocation shall be subject to the approval of Holdings (such approval not to be unreasonably withheld, conditioned or delayed).

Section 5.06. Tax Withholding; Withholding Advances.

(a) Tax Withholding.

(i) If requested by the Company, each Economic Member shall, if able to do so, deliver to the Company: (A) an affidavit, in a form satisfactory to the Company, that the applicable Economic Member (or its partners, as the case may be) is not subject to withholding under the provisions of any federal, state, local, foreign or other law (including under the Centralized Partnership Audit Regime and Section 1446(f) of the Code); (B) any certificate that the Company may reasonably request with respect to any such laws; and/or (C) any other form or instrument reasonably requested by the Company relating to any Economic Member's status under such law. In the event that an Economic Member fails or is unable to deliver to the Company an affidavit described in subclause (A) of this clause (i), the Company may withhold amounts from such Economic Member in accordance with Section 5.06(b).

(ii) After receipt of a written request of any Economic Member, the Company shall provide such information to such Economic Member and take such other action as may be reasonably necessary to assist such Economic Member in making any necessary filings, applications or elections to obtain any available exemption from, or any available refund of, any withholding imposed by any taxing authority with respect to amounts distributable or items of income allocable to such Economic Member hereunder to the extent not adverse to the Company or any Member. In addition, the Company shall, at the request of any Economic Member, make or cause to be made any such filings, applications or elections referred to in the preceding sentence; provided that any such requesting Economic Member shall cooperate with the Company with respect to any such filing, application or election to the extent reasonably determined by the Company and that any filing fees, taxes or other out-of-pocket expenses reasonably incurred and related thereto shall be paid and borne by such requesting Economic Member or, if there is more than one requesting Economic Member, by such requesting Economic Members in accordance with their Relative Percentage Interests.

(b) Withholding Advances. To the extent the Company is required by Applicable Law to withhold or to otherwise make tax payments on behalf of or with respect to any Economic Member (e.g., backup withholding, or withholding (or deduction from amounts otherwise due to such Member under this Agreement) of amounts due under the Centralized Partnership Audit Regime or Section 1446(f) of the Code) ("Withholding Advances"), the Company may withhold or deduct from amounts otherwise due under this Agreement such amounts and make such tax payments as so required.

(c) Repayment of Withholding Advances. All Withholding Advances made on behalf of an Economic Member, plus interest thereon at a rate equal to the Prime Rate as of the date of such Withholding Advances plus 2.0% per annum, shall (i) be paid on demand by the Economic Member on whose behalf such Withholding Advances were made (it being understood that no such payment shall increase such Member's Capital Account), or (ii) with the consent of the Board, be repaid by reducing the

amount of the current or next succeeding distribution or distributions that would otherwise have been made to such Economic Member or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Economic Member. Whenever repayment of a Withholding Advance by an Economic Member is made as described in clause (ii) of this Section 5.06(c), for all other purposes of this Agreement, such Economic Member shall be treated as having received all distributions (whether before or upon any Dissolution Event) unreduced by the amount of such Withholding Advance and interest thereon.

(d) Withholding Advances — Reimbursement of Liabilities. Each Economic Member hereby agrees to reimburse the Company for any liability with respect to Withholding Advances (including interest thereon) required or made on behalf of or with respect to such Economic Member (including penalties imposed with respect thereto).

(e) Survival. The provisions of this Section 5.06, including any obligations arising therefrom, shall survive the dissolution of the Company or the termination of the Member's interest in the Company and shall remain binding on the Member.

ARTICLE VI. CERTAIN TAX MATTERS

Section 6.01. Partnership Representative.

(a) Initial Partnership Representative. The Board shall designate the Partnership Representative (and if the Partnership Representative is an entity, an individual to serve as the Designated Individual) of the Company.

(b) Authority. Notwithstanding anything to the contrary herein, all decisions and all actions, including the making of (and decision not to make) elections, that the Partnership Representative is authorized to make or do under the Centralized Partnership Audit Regime or this Agreement may be made by the Partnership Representative only as directed by the Board. The Partnership Representative shall keep the Board fully and timely informed by written notice of any pending or threatened tax action, investigation, claim, controversy or other proceedings involving the Company (each, an "Audit"), as well as the commencement of any Audit, the current developments and status of any Audit and the availability of elections, options and different possible actions involving any Audit. Each Member shall fully and timely cooperate with the Partnership Representative for purposes of carrying out the Partnership Representative's duties as set forth under the Centralized Partnership Audit Regime. The Partnership Representative shall keep each Member informed of all administrative and judicial tax proceedings; provided, however, that in no event shall the Partnership Representative settle any Audit (i) that could reasonably be expected to have a significant adverse effect on Pubco without the consent (not to be unreasonably withheld) of Pubco and (ii) without the consent of Holdings if such settlement relates to the treatment of Holdings' transfer of assets and liabilities to the Company. In addition, the Company shall, upon reasonable request by the Members, cooperate and provide information and access to books and records as is necessary or desirable to assist Members in connection with any Audit related to income of the Company.

(c) Elections/Adjustments. The Partnership Representative shall have the right to make an annual election under Section 6221(b) of the Code (if eligible) on the Company's tax return or in connection with an audit, an election under Section 6226 of the Code. If an election under Section 6226 of the Code is made, the Partnership Representative shall furnish to each Member for the year under Audit a statement of the Member's share of the Member's assessment as set forth in the Notice of Final Partnership Administrative Adjustment, and each Member shall take such adjustment into account as required under Section 6226(b) of the Code. If the Partnership Representative elects to apply the

procedures set forth in Section 6225(c)(2)(A) of the Code (the “amended return option”) or Section 6225(c)(2)(B) of the Code (the “pull in option”), each Member agrees (i) to cooperate with, and to provide on a timely basis to the Partnership Representative, all information required to comply with either the amended return option or the pull in option, and (ii) upon the request of the Partnership Representative, to file any amended U.S. federal income tax return and pay any tax due in connection with such tax return in accordance with Section 6225(c) of the Code (as determined in the Board’s reasonable discretion, taking into account relevant factors) within ten calendar days prior to the date the amount is owed to the IRS (which amount shall not be treated as a Capital Contribution); provided, however, that in no event shall Holdings or Pubco be required to file any such amended U.S. federal income tax return without its prior written consent.

(d) Expenses. Any direct or indirect cost incurred by the Partnership Representative, acting in its capacity as such, shall be deemed costs and expenses of the Company, and the Company shall reimburse the Partnership Representative for such amounts.

(e) Survival. The provisions of this Section 6.01, including any obligations arising therefrom, shall survive the termination of the Company or the termination of the Member’s interest in the Company and shall remain binding on the Member, the Board, and the Company for the period of time necessary to resolve with the IRS or other federal, state or applicable local tax agency any and all tax matters relating to the Company for taxable years that are subject to the Centralized Partnership Audit Regime.

Section 6.02. Section 754 Election. The Company and each of its Subsidiaries that is treated as a partnership for U.S. federal income tax purposes shall have in effect an election under Section 754 of the Code (and a corresponding election under state and local law, as applicable) for each taxable year, and the Board shall not take any action to revoke such election.

ARTICLE VII. MANAGEMENT OF THE COMPANY

Section 7.01. Establishment of the Board. A board of managers of the Company (the “Board”) is hereby established and shall be comprised of natural Persons (each, a “Manager”) who shall be appointed in accordance with the provisions of Section 7.02. No Manager need be a Member. Except as otherwise specifically set forth in this Agreement, each member of the Board shall be deemed to be a “manager” for purposes of applying the Delaware LLC Act. Except as expressly provided in this Agreement or the Delaware LLC Act, none of the Members shall have management authority or rights over the Company or its Subsidiaries. The Board and the Officers of the Company are, to the extent of their respective rights and powers set forth in this Agreement, agents of the Company for the purpose of the Company’s and its Subsidiaries’ business, and the actions of the Board and the Officers of the Company, taken in accordance with such rights and powers shall bind the Company (and none of the Members shall have such right). The Board shall be responsible for the oversight of the Company’s operations and overall performance and strategy, while the management of the day-to-day operations of the business of the Company and the execution of business strategy shall be the responsibility of the Officers and employees of the Company and the officers and employees of its Subsidiaries. Except as expressly provided in this Agreement, the Board shall have all necessary powers to carry out the purposes, business and objectives of the Company and its Subsidiaries. The Board may delegate to Members, employees, Officers or agents of the Company or any Subsidiary in its discretion the authority to sign agreements and other documents on behalf of the Company or any Subsidiary.

Section 7.02. Board Composition; Vacancies.

(a) The number of Managers constituting the Board shall be fixed by the Voting Member from time to time, but shall not be less than five nor more than twelve members. Any vacancies in the Board that occur for any reason, including vacancies that occur by reason of an increase in the number of Managers, may be filled only by the Voting Member.

(b) The Managers shall elect one of the members of the Board to be chairperson of the Board. The chairperson shall preside at all meetings of the Board, unless absent from such meeting, in which case, if there is a quorum, the Managers present may elect another Manager to preside at such meeting.

Section 7.03. Removal; Resignation. A Manager may be removed at any time, with or without cause, by the Voting Member. A Manager may resign at any time from the Board by delivering his or her written resignation to the Board. Any such resignation shall be effective upon receipt thereof unless it is specified to be effective at some other time or upon the occurrence of some other event. The Board's acceptance of a resignation shall not be necessary to make it effective.

Section 7.04. Meetings.

(a) Regular meetings of the Board shall be held on such days and at such times and places either within or without the State of Delaware as shall from time to time be fixed by the chairperson of the Board. Notice of such regular meetings need not be given. Special meetings of the Board may be held at any day, time and place, within or without the State of Delaware, upon the call of the chairperson of the Board or the president or other chief executive officer of the Company, by oral, written, e-mail or other electronically transmitted notice duly given, sent or mailed to each Manager, at such Manager's last known address, not less than twenty-four hours before such meeting; provided, however, that any Manager may, at any time, in writing or by e-mail or other electronic transmission, waive notice of any meeting at which he or she may not be or may not have been present. Attendance of a Manager at any meeting shall constitute a waiver of notice of the meeting, except where a Manager attends a meeting for the sole and express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Board need be specified in the notice or waiver of notice of such meeting. Rules of procedure for the conduct of such meetings may be adopted by resolution of the Board.

(b) Members of the Board or of any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

(c) Each Manager shall have one vote on all matters submitted to the Board or any committee thereof.

Section 7.05. Action By Written Consent. Notwithstanding anything herein to the contrary, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if a majority of the Managers or the majority of the members of such committee, as the case may be, execute a consent thereto in writing, or by electronic transmission, setting forth the action so taken. Such consent shall have the same force and effect as a vote at a meeting where a quorum was present and shall be filed with the minutes of proceedings of the Board or such committee, as applicable.

Section 7.06. Quorum. A majority of the Board then in office shall constitute a quorum at all meetings of the Board, and the act of the majority of the Managers present at any meeting at which a quorum is present shall be the act of the Board, unless a greater number of Managers is required by the Company's Certificate of Formation, this Agreement or by Applicable Law. At any meeting of Managers, whether or not a quorum is present, the Managers present thereat may adjourn the same from time to time without notice other than announcement at the meeting. A Manager who may be disqualified, by reason of personal interest, from voting on any particular matter before a meeting of the Board may nevertheless be counted for the purpose of constituting a quorum of the Board.

Section 7.07. Compensation. The Board may, by resolution passed by a majority of the Board, fix the terms and amount of compensation payable to any Person for his or her services as Manager, if he or she is not otherwise compensated for services rendered as an Officer or employee of the Company, as an officer or employee of any Subsidiary of the Company, as an officer or employee of Holdings or any Subsidiary of Holdings or as a director of Pubco; provided, however, that any Manager may be reimbursed for reasonable and necessary expenses of attending meetings of the Board, or otherwise incurred for any Company purpose; and provided, further, that members of any special or standing committee of Managers also may be allowed compensation and expenses similarly incurred. Nothing herein contained shall be construed to preclude any Manager from serving the Company, any Subsidiary of the Company, Holdings, any Subsidiary of Holdings (other than the Company and its Subsidiaries), Pubco or any of their respective Affiliates in any other capacity and receiving compensation therefor.

Section 7.08. Committees. The Board may, by resolution passed by a majority of the entire Board, designate two or more Managers to constitute an executive committee of the Board which shall have and exercise all of the authority of the Board in the management of the Company, in the intervals between meetings of the Board. In addition, the Board may appoint any other committee or committees, with such members, functions and powers as the Board may designate. The Board shall have the power at any time to fill vacancies in, to change the size or membership of or to dissolve any one or more of such committees. Each such committee shall have such name as may be determined by the Board, and shall keep regular minutes of its proceedings and report the same to the Board for approval as required. At all meetings of a committee, a majority of the committee members then in office shall constitute a quorum for the purpose of transacting business, and the acts of a majority of the committee members present at any meeting at which there is a quorum shall be the acts of the committee. A Manager who may be disqualified, by reason of personal interest, from voting on any particular matter before a meeting of a committee may nevertheless be counted for the purpose of constituting a quorum of the committee.

Section 7.09. Decisions by the Members. Except as expressly provided herein (including with respect to any special approval rights granted to Holdings hereunder), no Members nor any class of Members shall have any voting rights nor the power or authority to vote, approve or consent to any matter or action taken by the Company. Except as otherwise provided herein, any proposed matter or action subject to the vote, approval or consent of the Members shall require the approval of the Board.

Section 7.10. Officers.

(a) Appointment of Officers. The Board may appoint individuals as officers ("Officers") of the Company, which may include such officers as the Board determines are necessary and appropriate. No Officer need be a Member. An individual may be appointed to more than one office.

(b) Authority of Officers. The Officers shall have the duties, rights, powers and authority as may be prescribed by the Board from time to time, and shall be responsible for carrying out the Company's business and affairs on a day-to-day basis, including the execution of business strategy of the Company and its Subsidiaries.

(c) Removal, Resignation and Filling of Vacancy of Officers. The Board may remove any Officer, for any reason or for no reason, at any time. Any Officer may resign at any time by giving written notice to the Company, and such resignation shall take effect at the date of the receipt of that notice or any later time specified in that notice; provided that, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any such resignation shall be without prejudice to the rights, if any, of the Company or such Officer under this Agreement. A vacancy in any office because of death, resignation, removal or otherwise shall be filled by the Board.

Section 7.11. Reimbursement for Expenses. The Members acknowledge and agree that, upon consummation of the IPO, Pubco's Class A Common Stock is and will continue to be publicly traded and therefore Pubco will have access to the public capital markets and that such status and the services performed by Pubco will inure to the benefit of the Company and all Members; therefore, Pubco shall be reimbursed by the Company for any reasonable out-of-pocket expenses incurred on behalf of the Company, including all fees, expenses and costs of Pubco associated with being a public company (including public reporting obligations, proxy statements, stockholder meetings, stock exchange fees, transfer agent fees, SEC and FINRA filing fees and offering expenses) and maintaining its corporate existence. To the extent practicable, expenses incurred by Pubco on behalf of or for the benefit of the Company shall be billed directly to and paid by the Company and, if and to the extent any reimbursements to Pubco or any of its Affiliates by the Company pursuant to this Section 7.11 constitute gross income to such Person (as opposed to the repayment of advances made by such Person on behalf of the Company), such amounts shall be treated as "guaranteed payments" within the meaning of Code Section 707(c) and shall not be treated as distributions for purposes of computing the Members' Capital Accounts. Notwithstanding the foregoing, the Company shall not bear any income tax obligations of Pubco or any payments made pursuant to the Tax Matters Agreement or Tax Receivable Agreement.

ARTICLE VIII. TRANSFERS OF INTERESTS

Section 8.01. Restrictions on Transfers.

(a) Except as expressly permitted by Section 8.02, and subject to Section 8.01(b), Section 8.01(c), Section 8.01(d) and Section 8.04, any underwriter lock-up agreement applicable to such Member and/or any other agreement between such Member and the Company, Pubco or any of their controlled Affiliates, without the prior written approval of the Board, no Member shall directly or indirectly Transfer all or any part of its Units or any right or economic interest pertaining thereto, including the right to vote or consent on any matter or to receive or have any economic interest in distributions or advances from the Company pursuant thereto. Any such Transfer which is not in compliance with the provisions of this Agreement shall be deemed a Transfer by such Member of Units in violation of this Agreement (and a breach of this Agreement by such Member) and shall be null and void ab initio.

(b) Except as otherwise expressly provided herein, it shall be a condition precedent to any Transfer otherwise permitted or approved pursuant to this Article VIII that:

- (i) the Transferor shall have provided to the Company prior written notice of such Transfer; and
- (ii) the Transfer shall comply with all Applicable Laws.

(c) Notwithstanding any other provision of this Agreement to the contrary, no Member shall directly or indirectly Transfer all or any part of its Units or any right or economic interest pertaining thereto if such Transfer, in the reasonable discretion of the Board, would cause the Company to be classified as a "publicly traded partnership" as that term is defined in Section 7704 of the Code and the Treasury Regulations promulgated thereunder.

(d) Any Transfer of Units pursuant to this Agreement, including this Article VIII, shall be subject to the provisions of Section 3.01 and Section 3.02.

Section 8.02. Certain Permitted Transfers. Notwithstanding anything to the contrary herein, the following Transfers shall be permitted without the prior written consent of the Board pursuant to Section 8.01:

(a) Any Transfer by any Member of its Units pursuant to a Pubco Offer or Disposition Event;

(b) Any Transfer of Units or other Equity Securities by Holdings or its Affiliates (other than Pubco or any of its Subsidiaries) to any Person; provided that this Section 8.02(b) shall not apply to any Transfers otherwise described in Section 8.02(c), Section 8.02(d), Section 8.02(e) or Section 8.02(f); provided further that any Transfer in reliance on this Section 8.02(b) shall be subject to Section 8.04;

(c) Any Transfer by any Member of its Units in connection with a Redemption pursuant to Article IX;

(d) Any Transfer of Registrable Securities (as such term is defined in the Investor Rights Agreement) in accordance with the Investor Rights Agreement;

(e) Any Transfer by Holdings of Units or any other Equity Securities to the shareholders of Holdings in connection with any distribution of any direct or indirect interest of Holdings in the Company (including transfers to a Subsidiary of Holdings in connection with a transaction that is intended to satisfy the requirements of Section 355 or Section 368 of the Code (whether or not accompanied by a merger of such Subsidiary with Pubco or any of its Subsidiaries)); or

(f) Any Transfer of shares of Class A Common Stock.

Section 8.03. Registration of Transfers. When any Units are Transferred in accordance with the terms of this Agreement, the Company shall cause such Transfer to be registered on the books of the Company.

Section 8.04. Class B Common Stock Voting Rights. In connection with any (i) Transfer by Holdings or its Affiliates (other than Pubco or any of its Subsidiaries) of any Nonvoting Common Units to any Person other than Holdings, any Affiliates of Holdings or Pubco or any of its Subsidiaries (each, a "Non-Affiliated Transferee") in reliance on Section 8.02(b), or (ii) issuance of additional Nonvoting Common Units by the Company to any Non-Affiliated Transferee, in either case, the holder of the share of Class B Common Stock shall either grant to such Non-Affiliated Transferee a written proxy, or enter into a written voting agreement or other voting arrangement with such Non-Affiliated Transferee, in either case, which shall provide as follows:

(a) the specific number or percentage of votes to which the share of Class B Common Stock is entitled that is covered by such proxy, agreement or other arrangement;

(b) so long as the holder of the share of Class B Common Stock and its Affiliates (other than Pubco or any of its Subsidiaries) hold in the aggregate more than fifty percent (50%) of the Nonvoting Common Units, such Non-Affiliated Transferee shall have the right, in its discretion, to direct the holder of the share of Class B Common Stock to cast a number of votes to which the outstanding share of Class B Common Stock is entitled on all matters on which stockholders in Pubco generally are entitled to vote (whether at a meeting of stockholders or by written consent) as set forth in such proxy, agreement or other arrangement, which, for the avoidance of doubt, need not provide for any such right until the occurrence of the event described in Section 8.04(c);

(c) in the event that, as of the record date for any meeting of the Pubco stockholders at which such stockholders are entitled to vote, the holder of the share of Class B Common Stock and its Affiliates (other than Pubco or any of its Subsidiaries) holds in the aggregate fifty percent (50%) or less of the Nonvoting Common Units outstanding as of such record date, such Non-Affiliated Transferee shall have the right, in its discretion, to direct the holder of the share of Class B Common Stock to cast a number of votes to which the outstanding share of Class B Common Stock is entitled on all matters on which stockholders in Pubco generally are entitled to vote equal to the number of Nonvoting Common Units held by such Non-Affiliated Transferee (and, for the avoidance of doubt, in the event no such direction is provided by such Non-Affiliated Transferee, the holder of the share of Class B Common Stock shall not otherwise have the right to cast such number of votes subject to such proxy, agreement or other arrangement for which no direction was provided); and

(d) in the event of a subsequent Transfer by the Non-Affiliated Transferee of Nonvoting Common Units to another Person (which must be permitted by and pursuant to the terms of this Agreement), the Transferor's rights under the proxy, agreement or other arrangement referenced in this Section 8.04 shall automatically be deemed assigned or transferred, in whole or in part, to such acquiring Person to the extent it acquires associated Nonvoting Common Units; provided, however, that such rights shall not extend to any Affiliates of the holder of the share of Class B Common Stock, and the Transfer of any Nonvoting Common Units by any Non-Affiliated Transferee to the holder of the share of Class B Common Stock or any of its Affiliates (including, for the avoidance of doubt, Pubco or the Company) shall constitute a revocation of the rights granted under such proxy, agreement or other arrangement with respect to such Nonvoting Common Units.

ARTICLE IX. REDEMPTION

Section 9.01. Redemption Right of a Member.

(a) Subject to the provisions set forth in this Section 9.01, each Member (other than Pubco) shall be entitled to cause the Company to redeem (a "Redemption") its Nonvoting Common Units (the "Redemption Right") at any time (subject to any applicable lock-up agreements). A Member desiring to exercise its Redemption Right (the "Redeeming Member") shall exercise such right by giving written notice (the "Redemption Notice") to the Company with a copy to Pubco. The Redemption Notice shall specify the number of Nonvoting Common Units (the "Redeemed Units") that the Redeeming Member intends to have the Company redeem and a date, not less than seven (7) Business Days nor more than ten (10) Business Days after delivery of such Redemption Notice (unless and to the extent that the Board in its sole discretion agrees in writing to waive such time periods), on which exercise of the Redemption Right shall be completed (the "Redemption Date"); provided that the Company, Pubco and the Redeeming Member may change the number of Redeemed Units and/or the Redemption Date specified in such Redemption Notice to another number and/or date by mutual agreement signed in writing by each of them; provided further that a Redemption may be conditioned on (i) the Redeeming Member having entered into a valid and binding agreement with a third party for the sale of shares of Class A Common Stock that may be distributed to the Redeeming Member in connection with such proposed Redemption (whether in a tender or exchange offer, private sale or otherwise) and such agreement is subject to customary closing conditions for agreements of such kind and the delivery of the Class A Common Stock by the Redeeming Member to such third party, (ii) the closing of an announced merger, consolidation or other transaction in which the shares of Class A Common Stock that may be distributed to the Redeeming Member in connection with such proposed Redemption would be exchanged

or converted or become exchangeable for or convertible into cash or other securities or property and/or (iii) the closing of an underwritten distribution of the shares of Class A Common Stock that may be distributed to the Redeeming Member in connection with such proposed Redemption. Unless the Redeeming Member timely has delivered a Retraction Notice as provided in Section 9.01(b) or has revoked or delayed a Redemption as provided in Section 9.01(c), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date): (A) the Redeeming Member shall transfer and surrender the Redeemed Units to the Company, free and clear of all liens and encumbrances, and (B) the Company shall (x) cancel the Redeemed Units, (y) transfer to the Redeeming Member the consideration to which the Redeeming Member is entitled under Section 9.01(b), and (z) if the Units are certificated, issue to the Redeeming Member a certificate for a number of Nonvoting Common Units equal to the difference (if any) between the number of Nonvoting Common Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (A) of this Section 9.01(a) and the Redeemed Units.

(b) In exercising its Redemption Right, a Redeeming Member shall be entitled to receive the Share Settlement or the Cash Settlement; provided that the Company shall have the option (as determined by the Board) as provided in Section 9.02 and subject to Section 9.01(d) to select whether the redemption payment is made by means of a Share Settlement or a Cash Settlement. Within three (3) Business Days of delivery of the Redemption Notice, the Company shall give written notice (the "Contribution Notice") to Pubco and to the Redeeming Member of its intended settlement method; provided that if the Company does not timely deliver a Contribution Notice, the Company shall be deemed to have elected the Share Settlement method. If the Company elects the Cash Settlement method, the Redeeming Member may retract its Redemption Notice by giving written notice (the "Retraction Notice") to the Company (with a copy to Pubco) within two (2) Business Days of delivery of the Contribution Notice. The timely delivery of a Retraction Notice shall terminate all of the Redeeming Member's, the Company's and Pubco's rights and obligations under this Section 9.01 arising from the Redemption Notice.

(c) In the event the Company elects a Share Settlement in connection with a Redemption, a Redeeming Member shall be entitled to revoke its Redemption Notice or delay the consummation of a Redemption if any of the following conditions exists: (i) any registration statement pursuant to which the resale of the Class A Common Stock to be registered for such Redeeming Member at or immediately following the consummation of the Redemption shall have ceased to be effective pursuant to any action or inaction by the SEC or no such resale registration statement has yet become effective; (ii) Pubco shall have failed to cause any related prospectus to be supplemented by any required prospectus supplement necessary to effect such Redemption; (iii) Pubco shall have exercised its right to defer, delay or suspend the filing or effectiveness of a registration statement and such deferral, delay or suspension shall affect the ability of such Redeeming Member to have its Class A Common Stock registered at or immediately following the consummation of the Redemption; (iv) Pubco shall have disclosed to such Redeeming Member any material non-public information concerning Pubco, the receipt of which could reasonably be determined to result in such Redeeming Member being prohibited or restricted from selling Class A Common Stock at or immediately following the Redemption without disclosure of such information, and Pubco does not permit such Redeeming Member to disclose such information; (v) any stop order relating to the registration statement pursuant to which the Class A Common Stock was to be registered by such Redeeming Member at or immediately following the Redemption shall have been issued by the SEC; (vi) there shall have occurred a material disruption in the securities markets generally or in the market or markets in which the Class A Common Stock is then traded; (vii) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Authority that restrains or prohibits the Redemption; (viii) Pubco shall have failed to comply in all material respects with its obligations under the Investor Rights Agreement, and such failure shall have affected the ability of such Redeeming Member to consummate the resale of the Class A

Common Stock to be received upon such redemption pursuant to an effective registration statement or (ix) the Redemption Date would occur three (3) Business Days or less prior to, or during, a Black-Out Period; provided that in no event shall the Redeeming Member seek to revoke its Redemption Notice or delay the consummation of such Redemption in reliance on any of the matters contemplated in clauses (i) through (ix) above if the Redeeming Member shall have controlled or intentionally materially influenced any facts, circumstances or Persons in connection therewith (except in the good faith performance of his or her duties as an officer or director of Pubco) in order to provide such Redeeming Member with a basis for such delay or revocation. If a Redeeming Member delays the consummation of a Redemption pursuant to this Section 9.01(c), the Redemption Date shall occur on the fifth (5th) Business Day following the date on which the conditions giving rise to such delay cease to exist (or such earlier day as Pubco, the Company and such Redeeming Member may agree in writing).

(d) The number of shares of Class A Common Stock or the Redeemed Units Equivalent that a Redeeming Member is entitled to receive under Section 9.01(b) shall not be adjusted on account of any distributions previously made with respect to the Redeemed Units or dividends previously paid with respect to Class A Common Stock; provided, however, that if a Redeeming Member causes the Company to redeem Redeemed Units and the Redemption Date occurs subsequent to the record date for any distribution with respect to the Redeemed Units but prior to payment of such distribution, the Redeeming Member shall be entitled to receive such distribution with respect to the Redeemed Units on the date that it is made notwithstanding that the Redeeming Member transferred and surrendered the Redeemed Units to the Company prior to such date; provided further, however, that a Redeeming Member shall be entitled to receive any and all Tax Distributions that such Redeeming Member otherwise would have received in respect of income allocated to such Member for the portion of any Fiscal Year irrespective of whether such Tax Distribution(s) are declared or made after the Redemption Date.

(e) In the event of a reclassification, reorganization, recapitalization or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, securities or other property, then in exercising its Redemption Right a Redeeming Member shall be entitled, in the case of a Redemption effected using the Share Settlement method, to receive the amount of such security, securities or other property that the Redeeming Member would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification, reorganization, recapitalization or other similar transaction. For the avoidance of doubt, if there is any reclassification, reorganization, recapitalization or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, securities or other property, this Section 9.01(e) shall continue to be applicable, mutatis mutandis, with respect to such security or other property.

(f) In the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization or similar transaction with respect to Class A Common Stock (a "Pubco Offer") is proposed by Pubco or is proposed to Pubco or its stockholders and approved by the board of directors of Pubco or is otherwise effected or to be effected with the consent or approval of the board of directors of Pubco, each Member (other than Pubco) shall be permitted to participate in such Pubco Offer by delivery of a Redemption Notice (which Redemption Notice shall be effective immediately prior to the consummation of such Pubco Offer (and, for the avoidance of doubt, shall be contingent upon such Pubco Offer and not be effective if such Pubco Offer is not consummated)). In the case of a Pubco Offer proposed by Pubco, Pubco shall use its reasonable best efforts expeditiously and in good faith to take all such actions and do all such things as are necessary or desirable to enable and permit the Economic Members to participate in such Pubco Offer to the same extent or on an economically equivalent basis as the holders of shares of Class A Common Stock without discrimination. For the avoidance of doubt (but subject to Section 9.01(g)), in no event shall the Members be entitled to receive in such Pubco Offer aggregate consideration for each Nonvoting Common Unit that is greater than the consideration payable in respect of each share of Class A Common Stock in connection with a Pubco Offer.

(g) Notwithstanding anything to the contrary contained herein, in Pubco Offer, payments under or in respect of the Tax Receivable Agreement shall not be considered part of the consideration payable in respect of any Nonvoting Common Unit or share of Class A Common Stock in connection with such Pubco Offer for the purposes of Section 9.01(f).

(h) Notwithstanding anything to the contrary contained herein, neither the Company nor Pubco shall be obligated to effectuate a Redemption if such Redemption could (as determined in the sole discretion of the Board) cause the Company to be treated as a “publicly traded partnership” or to be taxed as corporation pursuant Section 7704 of the Code or successor provisions of the Code.

Section 9.02. Election and Contribution of Pubco. In connection with the exercise of a Redeeming Member’s Redemption Rights under Section 9.01(a), Pubco shall contribute to the Company the consideration the Redeeming Member is entitled to receive under Section 9.01(b). Unless the Redeeming Member has timely delivered a Retraction Notice as provided in Section 9.01(b), or has revoked or delayed a Redemption as provided in Section 9.01(c), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) Pubco shall make its Capital Contribution to the Company (in the form of the Share Settlement or the Cash Settlement) required under this Section 9.02, and (ii) in the event of a Share Settlement, the Company shall issue to Pubco a number of Nonvoting Common Units equal to the number of Redeemed Units surrendered by the Redeeming Member. Notwithstanding any other provisions of this Agreement to the contrary, in the event that the Company elects a Cash Settlement, Pubco shall be obligated to contribute to the Company only an amount in respect of such Cash Settlement equal to the net proceeds (after deduction of any underwriters’ discounts or commissions and brokers’ fees or commissions) from the sale by Pubco of a number of shares of Class A Common Stock equal to the number of Redeemed Units to be redeemed with such Cash Settlement, which in no event shall exceed the amount paid by the Company to the Redeeming Member as Cash Settlement; provided that, for the avoidance of doubt, if the Cash Settlement to which the Redeeming Member is entitled exceeds the amount that is contributed to the Company by Pubco, the Company shall still be required to pay the Redeeming Member the full amount of the Cash Settlement. The timely delivery of a Retraction Notice shall terminate all of the Company’s and Pubco’s rights and obligations under this Section 9.02 arising from the Redemption Notice.

Section 9.03. Reservation of Shares of Class A Common Stock and other Procedures.

(a) At all times Pubco shall reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Redemption, such number of shares of Class A Common Stock as shall be issuable upon any such Redemption pursuant to Share Settlements; provided that nothing contained herein shall be construed to preclude Pubco from satisfying its obligations in respect of any such Redemption by delivery of purchased shares of Class A Common Stock (which may or may not be held in the treasury of Pubco) or the delivery of cash pursuant to a Cash Settlement. Pubco shall deliver shares of Class A Common Stock that have been registered under the Securities Act with respect to any Redemption to the extent a registration statement is effective and available for such shares. Pubco shall use its commercially reasonable efforts to list the shares of Class A Common Stock required to be delivered upon any such Redemption prior to such delivery upon each national securities exchange upon which the outstanding shares of Class A Common Stock are listed or quoted on at the time of such Redemption (it being understood that any such shares may be subject to transfer restrictions under applicable securities laws). Pubco covenants that all shares of Class A Common Stock issued upon a Redemption will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this Article IX shall be interpreted and applied in a manner consistent with the corresponding provisions of Pubco’s certificate of incorporation.

(b) The shares of Class A Common Stock issued upon a Redemption, if any, shall bear a legend in substantially the following form:

THE TRANSFER OF THESE SECURITIES HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTION, AND MAY NOT BE SOLD OR TRANSFERRED OTHER THAN IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED (OR OTHER APPLICABLE LAW), OR AN EXEMPTION THEREFROM.

(c) If (i) any shares of Class A Common Stock may be sold pursuant to a registration statement that has been declared effective by the SEC, (ii) all of the applicable conditions of Rule 144 are met or (iii) the legend (or a portion thereof) otherwise ceases to be applicable, Pubco, as applicable, upon the written request of the Member thereof shall promptly provide such Member or its respective transferees, without any expense to such Persons (other than applicable transfer taxes and similar governmental charges, if any), with new certificates (or evidence of book-entry shares) for securities of like tenor not bearing the provisions of the legend with respect to which the restriction has terminated. In connection therewith, such Member shall provide Pubco with such information in its possession as Pubco may reasonably request in connection with the removal of any such legend.

(d) Pubco shall bear all expenses in connection with the consummation of any Redemption, whether or not any such Redemption is ultimately consummated, including any transfer taxes, stamp taxes or duties or other similar taxes in connection with, or arising by reason of, any Redemption; provided, however, that if any shares of Class A Common Stock are to be delivered in a name other than that of the Member that requested the Redemption (or The Depository Trust Company or its nominee for the account of a participant of The Depository Trust Company that will hold the shares for the account of such Member), then such Member and/or the Person in whose name such shares are to be delivered shall pay to Pubco the amount of any transfer taxes, stamp taxes or duties or other similar taxes in connection with, or arising by reason of, such Redemption or shall establish to the reasonable satisfaction of Pubco that such tax has been paid or is not payable.

Section 9.04. Effect of Exercise of Redemption. This Agreement shall continue notwithstanding the consummation of a Redemption and all governance or other rights set forth herein shall be exercised by the remaining Members and the Redeeming Member (to the extent of such Redeeming Member's remaining interest in the Company). No Redemption shall relieve such Redeeming Member of any prior breach of this Agreement.

Section 9.05. Tax Treatment. The parties hereto acknowledge and agree that each Redemption pursuant to this Article IX shall be treated as a taxable sale of Units by the Redeeming Member from Pubco pursuant to Section 707(a)(2)(B) of the Code (or any similar provisions of applicable state, local or foreign tax law).

ARTICLE X.
LIMITATION ON LIABILITY, EXCULPATION AND INDEMNIFICATION

Section 10.01. Limitation on Liability. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company; provided that the foregoing shall not alter a Member's obligation to return funds wrongfully distributed to it.

Section 10.02. Exculpation and Indemnification.

(a) No Covered Person shall be liable, including under any legal or equitable theory of fiduciary duty or other theory of liability, to the Company or to any other Covered Person for any losses, claims, damages or liabilities incurred by reason of any act or omission performed or omitted by the Board or such Covered Person in good faith on behalf of the Company. There shall be, and each Covered Person shall be entitled to, a presumption that such Covered Person acted in good faith.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such Person's professional or expert competence.

(c) The Company shall indemnify, defend and hold harmless each Covered Person against any losses, claims, damages, liabilities, expenses (including all reasonable out-of-pocket fees and expenses of outside counsel and other advisors), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings in which such Covered Person may be involved or become subject to, in connection with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document, unless such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount (i) is as a result of a Covered Person not acting in good faith on behalf of the Company or arose as a result of the willful commission by such Covered Person of any act that is dishonest and materially injurious to the Company, (ii) results from its contractual obligations under any Formation Document to be performed in a capacity other than as a Covered Person or (iii) results from the breach by any Member (in such capacity) of its contractual obligations under this Agreement; provided that in no event shall the Company be required to indemnify a Member for any loss of such Member's Capital Contribution or other investment loss or taxes imposed in connection with such Member's interest in the Company. If any Covered Person becomes involved in any capacity in any action, suit, proceeding or investigation in connection with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document (other than any Formation Document), other than by reason of any act or omission performed or omitted by such Covered Person that was not in good faith on behalf of the Company or constituted a willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company, the Company shall reimburse such Covered Person for its reasonable outside counsel legal and other reasonable out-of-pocket expenses (including the cost of any investigation and preparation) as they are incurred in connection therewith; provided that such Covered Person shall promptly repay to the Company the amount of any such reimbursed expenses paid to it if it shall be finally judicially determined that such Covered Person was not entitled to indemnification by, or contribution from, the Company in connection with such action, suit, proceeding or investigation. If for any reason (other than the bad faith of a Covered Person or the willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company) the foregoing indemnification is unavailable to such Covered Person, or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by such Covered Person as a result of such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount in such proportion as is appropriate to reflect any relevant equitable considerations. There shall be, and each Covered Person shall be entitled to, a rebuttable presumption that such Covered Person acted in good faith.

(d) The obligations of the Company under Section 10.02(c) shall be satisfied solely out of and to the extent of the Company's assets, and no Covered Person shall have any personal liability on account thereof.

(e) Given that certain Jointly Indemnifiable Claims may arise by reason of the service of a Covered Person to the Company and/or as a director, trustee, officer, partner, member, manager, employee, consultant, fiduciary or agent of other corporations, limited liability companies, partnerships, joint ventures, trusts, employee benefit plans or other enterprises controlled by the Company (collectively, the "Controlled Entities"), or by reason of any action alleged to have been taken or omitted in any such capacity, the Company acknowledges and agrees that the Company shall, and to the extent applicable shall cause the Controlled Entities to, be fully and primarily responsible for the payment to the Covered Person in respect of indemnification or advancement of all out-of-pocket costs of any type or nature whatsoever (including, without limitation, all outside attorneys' fees and related disbursements), in each case, actually and reasonably incurred by or on behalf of a Covered Person in connection with either the investigation, defense or appeal of a claim, demand, action, suit or proceeding or establishing or enforcing a right to indemnification under this Agreement or otherwise incurred in connection with a claim that is indemnifiable hereunder (collectively, "Expenses") in connection with any such Jointly Indemnifiable Claim, pursuant to and in accordance with (as applicable) the terms of (i) the Delaware LLC Act, (ii) this Agreement, (iii) any other agreement between the Company or any Controlled Entity and the Covered Person pursuant to which the Covered Person has rights to indemnification, advancement of expenses and/or insurance, (iv) the laws of the jurisdiction of incorporation or organization of any Controlled Entity and/or (v) the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership, certificate of qualification or other organizational or governing documents of any Controlled Entity ((i) through (v) collectively, the "Indemnification Sources"), irrespective of any right of recovery the Covered Person may have from the Indemnitee- Related Entities. Under no circumstance shall the Company or any Controlled Entity be entitled to any right of subrogation or contribution by the Indemnitee-Related Entities and no right of advancement or recovery the Covered Person may have from the Indemnitee-Related Entities shall reduce or otherwise alter the rights of the Covered Person or the obligations of the Company or any Controlled Entity under the Indemnification Sources. In the event that any of the Indemnitee-Related Entities shall make any payment to the Covered Person in respect of indemnification or advancement of Expenses with respect to any Jointly Indemnifiable Claim, (i) the Company shall, and to the extent applicable shall cause the Controlled Entities to, reimburse the Indemnitee-Related Entity making such payment to the extent of such payment promptly upon written demand from such Indemnitee-Related Entity, (ii) to the extent not previously and fully reimbursed by the Company and/or any Controlled Entity pursuant to clause (i), the Indemnitee-Related Entity making such payment shall be subrogated to the extent of the outstanding balance of such payment to all of the rights of recovery of the Covered Person against the Company and/or any Controlled Entity, as applicable, and (iii) the Covered Person shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the Indemnitee-Related Entities effectively to bring suit to enforce such rights. The Company and the Covered Person agree that each of the Indemnitee-Related Entities shall be third party beneficiaries with respect to this Section 10.02(e), entitled to enforce this Section 10.02(e) as though each such Indemnitee-Related Entity were a party to this Agreement. For the avoidance of doubt, the Company acknowledges and agrees that insurance policies carried by the

Indemnitee-Related Entities may have provisions reflecting the allocation of liability set forth in this Section 10.02(e). The Company shall cause each of the Controlled Entities to perform the terms and obligations of this Section 10.02(e) as though each such Controlled Entity was the “Company” under this Agreement. For purposes of this Section 10.02(e), the following terms shall have the following meanings:

(i) The term “Indemnitee-Related Entities” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Company, any Controlled Entity or the insurer under and pursuant to an insurance policy of the Company or any Controlled Entity) from whom a Covered Person may be entitled to indemnification or advancement of Expenses with respect to which, in whole or in part, the Company or any Controlled Entity also may have an indemnification or advancement obligation.

(ii) The term “Jointly Indemnifiable Claims” shall be broadly construed and shall include, without limitation, any claim, demand, action, suit or proceeding for which the Covered Person shall be entitled to indemnification or advancement of Expenses from both (i) the Company and/or any Controlled Entity pursuant to the Indemnification Sources, on the one hand, and (ii) any Indemnitee-Related Entity pursuant to any other agreement between any Indemnitee-Related Entity and the Covered Person pursuant to which the Covered Person is indemnified, the laws of the jurisdiction of incorporation or organization of any Indemnitee-Related Entity and/or the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of any Indemnitee-Related Entity, on the other hand.

ARTICLE XI. DISSOLUTION AND TERMINATION

Section 11.01. Dissolution.

(a) The Company shall not be dissolved by the admission of Additional Members or Substitute Members pursuant to Section 3.02.

(b) No Member shall (i) resign from the Company prior to the dissolution and winding up of the Company except in connection with a Transfer of Units pursuant to the terms of this Agreement or (ii) take any action to dissolve, terminate or liquidate the Company or to require apportionment, appraisal or partition of the Company or any of its assets, or to file a bill for an accounting, except as specifically provided in this Agreement, and each Member, to the fullest extent permitted by Applicable Law, hereby waives any rights to take any such actions under Applicable Law, including any right to petition a court for judicial dissolution under Section 18-802 of the Delaware LLC Act.

(c) The Company shall be dissolved and its business wound up only upon the earliest to occur of any one of the following events (each a “Dissolution Event”): (i) the expiration of forty-five (45) days after the sale or other disposition of all or substantially all of the assets of the Company; or (ii) upon the approval of the Board.

(d) The death, retirement, resignation, expulsion, bankruptcy, insolvency or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member of the Company shall not in and of itself cause dissolution of the Company.

Section 11.02. Winding Up of the Company.

(a) The Board shall promptly notify the other Members of any Dissolution Event. Upon dissolution, the Company’s business shall be liquidated in an orderly manner. The Board shall appoint a liquidating trustee to wind up the affairs of the Company pursuant to this Agreement. In performing its duties, the liquidating trustee is authorized to sell, distribute, exchange or otherwise dispose of the assets of the Company in accordance with the Delaware LLC Act and in any reasonable manner that the liquidating trustee shall determine to be in the best interest of the Members.

(b) The proceeds of the liquidation of the Company shall be distributed in the following order and priority:

(i) first, to the creditors (including any Members or their respective Affiliates that are creditors) of the Company in satisfaction of all of the Company's liabilities (whether by payment or by making reasonable provision for payment thereof, including the setting up of any reserves which are, in the judgment of the liquidating trustee, reasonably necessary therefor); and

(ii) second, to the Economic Members in the same manner as distributions under Section 5.03(b), subject to Section 5.03(e).

(c) Distribution of Property. In the event it becomes necessary in connection with the liquidation of the Company to make a distribution of Property in-kind, subject to the priority set forth in Section 11.02, the liquidating trustee shall have the right to compel each Economic Member to accept a distribution of any Property in-kind (with such Property, as a percentage of the total liquidating distributions to such Economic Member, corresponding as nearly as possible to such Economic Member's Economic Percentage Interest), with such distribution being based upon the amount of cash that would be distributed to such Members if such Property were sold for an amount of cash equal to the fair market value of such Property, as determined by the liquidating trustee in good faith, subject to the last sentence of Section 5.03(d).

Section 11.03. Termination. The Company shall terminate when all of the assets of the Company, after payment of or reasonable provision for the payment of all debts and liabilities of the Company shall have been distributed to the Members in the manner provided for in this Article XI, and the certificate of formation of the Company shall have been cancelled in the manner required by the Delaware LLC Act.

Section 11.04. Survival. Termination, dissolution, liquidation or winding up of the Company for any reason shall not release any party from any liability which at the time of such termination, dissolution, liquidation or winding up already had accrued to any other party or which thereafter may accrue in respect to any act or omission prior to such termination, dissolution, liquidation or winding up.

ARTICLE XII. MISCELLANEOUS

Section 12.01. Expenses. Subject to the terms and conditions of the Master Transaction Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such cost or expense.

Section 12.02. Further Assurances. Each Member agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by Applicable Law or as, in the reasonable judgment of the Board, may be necessary or advisable to carry out the intent and purposes of this Agreement.

Section 12.03. Notices. All notices, requests and other communications to any party hereunder shall be in writing (including electronic mail ("e-mail") transmission, so long as a receipt of such e-mail is requested and received) and shall be given to such party at the address or e-mail address specified for such party on the Member Schedule hereto, or to such other address or e-mail address as such party may

hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 12.04. Binding Effect; Benefit; Assignment.

(a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns, except to the extent provided herein with respect to Indemnitee-Related Entities and Covered Parties, each of whom are intended third party beneficiaries of those provisions that specifically relate to them with the right to enforce such provisions as if they were a party hereto.

(b) Except as provided in Article VIII, no Member may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the Board.

Section 12.05. Jurisdiction.

(a) The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates) shall be brought in the Delaware Court of Chancery or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 12.03 shall be deemed effective service of process on such party.

(b) EACH OF THE COMPANY AND THE MEMBERS HEREBY IRREVOCABLY DESIGNATES CORPORATION SERVICE COMPANY (IN SUCH CAPACITY, THE "PROCESS AGENT"), WITH AN OFFICE AT 251 LITTLE FALLS DRIVE, WILMINGTON, NEW CASTLE COUNTY, DELAWARE 19808, AS ITS DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, FOR AND ON ITS BEHALF, SERVICE OF PROCESS IN SUCH JURISDICTION IN ANY LEGAL ACTION OR PROCEEDINGS WITH RESPECT TO THIS AGREEMENT, AND SUCH SERVICE SHALL BE DEEMED COMPLETE UPON DELIVERY THEREOF TO THE PROCESS AGENT; PROVIDED THAT IN THE CASE OF ANY SUCH SERVICE UPON THE PROCESS AGENT, THE PARTY EFFECTING SUCH SERVICE SHALL ALSO DELIVER A COPY THEREOF TO EACH OTHER SUCH PARTY IN THE MANNER PROVIDED IN SECTION 12.03 OF THIS AGREEMENT. EACH PARTY SHALL TAKE ALL SUCH ACTION AS MAY BE NECESSARY TO CONTINUE SAID APPOINTMENT IN FULL FORCE AND EFFECT OR TO APPOINT ANOTHER AGENT SO THAT SUCH PARTY SHALL AT ALL TIMES HAVE AN AGENT FOR SERVICE OF PROCESS FOR THE ABOVE PURPOSES IN WILMINGTON, DELAWARE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW. EACH PARTY EXPRESSLY ACKNOWLEDGES THAT THE FOREGOING WAIVER IS INTENDED TO BE IRREVOCABLE UNDER THE LAWS OF THE STATE OF DELAWARE AND OF THE UNITED STATES OF AMERICA.

Section 12.06. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.07. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 12.08. Entire Agreement. This Agreement and the Formation Documents constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, among the parties with respect to the subject matter of this Agreement. Nothing in this Agreement shall create any third party beneficiary rights in favor of any Person or other party, except to the extent provided herein with respect to Indemnitee-Related Entities and Covered Parties, each of whom are intended third party beneficiaries of those provisions that specifically relate to them with the right to enforce such provisions as if they were a party hereto.

Section 12.09. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 12.10. Amendment.

(a) Except as set forth in Section 12.10(b), no amendment to this Agreement may be made without the prior written consent of the Board and a majority in interest of the Economic Members.

(b) Notwithstanding Section 12.10(a), this Agreement, including the Member Schedule, can be amended at any time and from time to time by the Board, acting alone: (i) to reflect the admission of new Members or Transfers of Units, each as provided by and in accordance with the terms of this Agreement, (ii) to effect any subdivisions or combinations of Units made in compliance with Section 4.02(c) and (iii) to issue additional Nonvoting Common Units or any new class of Units (whether or not *pari passu* with the Nonvoting Common Units) in accordance with the terms of this Agreement.

(c) No waiver of any provision or default under, nor consent to any exception to, the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

Section 12.11. Confidentiality.

(a) Each Member shall, and shall direct those of its Affiliates and their respective directors, officers, members, managers, stockholders, partners, employees, attorneys, accountants, consultants, trustees and other advisors (the "Member Parties") who have access to Confidential Information to, keep confidential and not disclose any Confidential Information to any Person other than a Member Party who agrees to keep such Confidential Information confidential in accordance with this Section 12.11, in each case without the express consent, in the case of Confidential Information acquired from the Company, of the Company or, in the case of Confidential Information acquired from another Member, such other Member, unless:

- (i) such disclosure shall be required by Applicable Law;
- (ii) such disclosure is reasonably required in connection with any Audit involving the Company or any Member or its Affiliates;
- (iii) such disclosure is reasonably required in connection with any litigation against or involving the Company or any Member;
- (iv) such information is publicly disclosed in connection with or as part of Holdings' or Pubco's ordinary course investor relations activities; or

(v) such disclosure is reasonably required in connection with any proposed Transfer of all or any part of such Member's Units in the Company; provided that with respect to any such use of any Confidential Information referred to in this clause (v), advance notice must be given to the Company so that it may require any proposed Transferee that is not a Member to enter into a confidentiality agreement with terms substantially similar to the terms of this Section 12.11 (excluding this clause (v)) prior to the disclosure of such Confidential Information.

(b) "Confidential Information" means any information related to the activities of the Company, the Members and their respective Affiliates that a Member may acquire from the Company or the Members, other than information that (i) is already available through publicly available sources of information (other than as a result of disclosure by such Member in violation of this Agreement or any other applicable agreement containing confidentiality provisions signed by such Member), (ii) was available to a Member on a non-confidential basis prior to its disclosure to such Member by the Company, or (iii) becomes available to a Member on a non-confidential basis from a third party; provided such third party is not known by such Member, after reasonable inquiry, to be bound by this Agreement or another confidentiality agreement with the Company. Such Confidential Information may include information that pertains or relates to the business and affairs of any other Member or any other Company matters. Confidential Information may be used by a Member and its Member Parties only in connection with Company matters and in connection with the maintenance of its interest in the Company.

(c) In the event that any Member or any Member Parties of such Member is required to disclose any of the Confidential Information, such Member shall use reasonable efforts to provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and such Member shall use reasonable efforts to cooperate with the Company in any effort any such Person undertakes to obtain a protective order or other remedy. In the event that such protective order or other remedy is not obtained, or that the Company waives compliance with the provisions of this Section 12.11, such Member and its Member Parties shall furnish only that portion of the Confidential Information that is legally required and shall exercise all reasonable efforts to obtain reasonably reliable assurance that the Confidential Information shall be accorded confidential treatment.

(d) Notwithstanding anything in this Agreement to the contrary, each Member may disclose to any persons the U.S. federal income tax treatment and tax structure of the Company and the transactions set out in the Master Transaction Agreement. For this purpose, “tax structure” is limited to any facts relevant to the U.S. federal income tax treatment of the Company and does not include information relating to the identity of the Company or any Member.

Section 12.12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State that would result in the application of the laws of any other State.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Limited Liability Company Agreement to be duly executed as of the day and year first written above.

BELLRING BRANDS, LLC,
a Delaware limited liability company

By: /s/ Darcy Horn Davenport
Name: Darcy Horn Davenport
Title: President and Chief Executive Officer

BELLRING BRANDS, INC.,
a Delaware corporation

By: /s/ Darcy Horn Davenport
Name: Darcy Horn Davenport
Title: President and Chief Executive Officer

POST HOLDINGS, INC.,
a Missouri corporation

By: /s/ Diedre J. Gray
Name: Diedre J. Gray
Title: Executive Vice President, General Counsel and
Chief Administrative Officer, Secretary

[SIGNATURE PAGE TO
AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT]

EMPLOYEE MATTERS AGREEMENT

This EMPLOYEE MATTERS AGREEMENT (this “Agreement”), dated as of October 21, 2019, is made by and among Post Holdings, Inc., a Missouri corporation (“Post”), BellRing Brands, Inc., a Delaware corporation (“BellRing Inc.”), and BellRing Brands, LLC, a Delaware limited liability company (“BellRing LLC”).

RECITALS

A. BellRing Inc., BellRing LLC, and Post are parties to that certain Master Transaction Agreement, dated as of October 7, 2019 (the “Transaction Agreement”).

B. To facilitate the transaction described in the Transaction Agreement, the parties deem it appropriate and in the best interests of the parties to enter into this Agreement for the purpose of, together with the Master Services Agreement, allocating assets, Liabilities and responsibilities with respect to certain employment matters, employee compensation and benefit plans and programs described herein between and among them.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby approve and adopt this Agreement and mutually covenant and agree with each other as follows:

ARTICLE I
DEFINITIONS

Unless otherwise defined or provided herein, the capitalized terms used herein shall have the meanings given to them in the Transaction Agreement. In addition to the other terms defined elsewhere in this Agreement, for the purposes of this Agreement, the following terms shall have the meaning set forth below:

“BellRing Benefit Plans” means any Benefit Plan sponsored or maintained or contributed to by BellRing Inc. or any member of the BellRing Group (or their predecessors), and any Benefit Plan assumed or adopted by BellRing Inc. or any member of the BellRing Group, specifically excluding any Post Benefit Plan.

“BellRing Employees” means employees of and service providers to BellRing Inc. or any member of the BellRing Group.

“Benefit Plan” means, with respect to an entity, each plan, program, arrangement, agreement or commitment (whether written or unwritten, formal or informal) that is an employment, consulting, non-competition or deferred compensation agreement, or an executive compensation, incentive bonus or other bonus, employee pension, profit-sharing, savings, retirement, supplemental retirement, stock option, stock purchase, stock appreciation rights, restricted stock, other equity-based compensation, severance pay, salary continuation, life, health, hospitalization, wellness, sick leave, vacation pay, disability or accident insurance plan, or other employee benefit plan, program, arrangement, agreement or commitment, (a) including any “employee benefit plan” (as defined in Section 3(3) of ERISA), sponsored or maintained by such entity (or to which such entity contributes or is required to contribute or has any Liabilities, directly or indirectly, contingent or fixed) and (b) excluding any indemnification obligations, other than any obligations contained in any of the foregoing.

A “Change of Control” of BellRing Inc. and BellRing LLC shall have occurred in the event any transaction or series of transactions (however structured or evidenced) is/are consummated which (a) results in Post no longer controlling more than 50% of the combined voting power of the capital stock of BellRing Inc. entitled to vote generally in the election of directors of BellRing Inc. (including, for avoidance of doubt, (i) the granting or entry into by Post or any of its Affiliates (other than BellRing Inc. or any of its Subsidiaries) of proxies, voting agreements or other voting arrangements with third parties in accordance with the BellRing Limited Liability Company Agreement pursuant to which such third parties have the right to direct how Post or any of its Affiliates (other than BellRing Inc. or any of its Subsidiaries) shall cast all or a portion of the votes to which the Class B Common Stock of BellRing Inc. is entitled, or (ii) the distribution by Post of its retained beneficial interest in BellRing Inc. by means of a spin-off or split-off to its shareholders (however structured or evidenced)), or (b) involves the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the assets of BellRing Inc. and its Subsidiaries taken as a whole; and a “Change of Control” of BellRing LLC shall have occurred in the event any transaction or series of transactions (however structured or evidenced) is/are consummated which (x) results in BellRing LLC no longer being a direct or indirect Subsidiary of BellRing Inc. or (y) involves the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the assets of BellRing LLC.

“COBRA” means the Consolidated Omnibus Budget and Reconciliation Act of 1985, as amended.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Former BellRing Employees” means former employees of and service providers to BellRing Inc. or any member of the BellRing Group, or any predecessor company thereto.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“Post Benefit Plans” means any Benefit Plan sponsored or maintained by Post or any member of the Post Group, specifically excluding any BellRing Benefit Plan.

ARTICLE II U.S. 401(K) AND HEALTH AND WELFARE PLANS

2.1 401(k) Plan. Members of the BellRing Group which employ employees eligible for the Post Holdings, Inc. Savings Investment Plan (“Post SIP”) shall remain “participating employers” (as such term is defined in the Post SIP) in the Post SIP through December 31, 2019. BellRing Inc. shall establish and adopt, effective January 1, 2020, a safe harbor 401(k) plan meeting the requirements of Code Section 401(k)(12)(B) and 401(m)(11) (the “BellRing Brands, Inc. 401(k) Plan”) and require that the trust that funds the BellRing Brands, Inc. 401(k) Plan shall accept a direct trust-to-trust transfer of the account balances of such eligible employees of BellRing Inc. and the BellRing Group from the trust that funds the Post SIP, which transfer shall include without limitation such employees’ loans taken out under the Post SIP. Without limiting the foregoing, BellRing Inc. shall ensure that the terms of the BellRing Brands, Inc. 401(k) Plan proposed to be adopted in accordance with the immediately preceding sentence and maintained thereafter may not differ significantly from those of the Post SIP to the extent that: (a) the difference in such terms would result in the service provider(s) selected for the BellRing Brands, Inc. 401(k) Plan not being able to establish the plan and accept contributions into the accounts for the BellRing Brands, Inc. 401(k) Plan effective January 1, 2020, as determined by such service provider(s); or (b) in the reasonable assessment of Post, the difference in such proposed terms (i) would pose a material risk that the Post SIP may fail any applicable nondiscrimination testing under the Code or (ii)

would otherwise be legally inadvisable with respect to Post or the Post SIP. As soon as feasibly possible and without unreasonable delay BellRing Inc. shall submit an application to the IRS seeking a favorable determination or opinion letter from the IRS that the BellRing Brands, Inc. 401(k) Plan is tax-qualified under Section 401(a) of the Code. Upon the adoption of the BellRing Brands, Inc. 401(k) Plan, BellRing Inc. and BellRing LLC shall permit and facilitate the participation of eligible employees of BellRing Inc. or any member of the BellRing Group who, as of December 31, 2019, were eligible to participate in the Post SIP.

2.2 U.S. Health and Welfare Benefit Plan.

(a) Unless otherwise determined by Post, BellRing Inc. and its Subsidiaries' participation in the Post Holdings, Inc. Health and Welfare Benefit Plan, including the Post severance plans which form part of the Post Holdings, Inc. Health and Welfare Benefit Plan ("Post H&W Plan"), shall cease December 31, 2019. Provided such participation in the Post H&W Plan ceases December 31, 2019, (i) BellRing Inc. or BellRing LLC shall adopt, or BellRing LLC shall cause one of its Subsidiaries to adopt, with Post's good faith and reasonable efforts to assist, a health and welfare benefit plan subject to ERISA ("BellRing Health and Welfare Benefit Plan"), and (ii) effective January 1, 2020, BellRing Inc. or BellRing LLC (or its Subsidiary) shall, subject to any actively-at-work requirements, permit and facilitate participation of eligible employees of BellRing Inc. and each member of the BellRing Group (and their dependents and beneficiaries), who, as of December 31, 2019, were eligible to participate in the Post H&W Plan, with such component benefits and under such terms and conditions as are substantially comparable in the aggregate to those that comprise the Post H&W Plan applicable to such employees as of December 31, 2019. BellRing Inc. or BellRing LLC shall, or BellRing LLC shall cause its applicable Subsidiary to, enter into HIPAA business associate agreements with applicable vendors of and service providers to the BellRing Health and Welfare Benefit Plan in accordance with applicable Law. For so long as BellRing Inc. or its Subsidiary(ies) that employ(s) or employed participants in the BellRing Health and Welfare Benefit Plan or participants in any other employee benefit program (x) are, when combined with Post or any of its Subsidiaries (other than BellRing Inc. or any of its Subsidiaries) treated as a "single employer" under Code Section 414(b) or 414(c) or successor provisions and the regulations thereunder, or (y) would otherwise be aggregated with Post or any of its Subsidiaries (other than BellRing Inc. or any of its Subsidiaries) for purposes of performing applicable nondiscrimination tests (all as determined by Post in its reasonable discretion), BellRing Inc. or BellRing LLC shall ensure or BellRing LLC shall cause its applicable Subsidiary to ensure that the BellRing Health and Welfare Benefit Plan shall not contain terms or conditions that vary from those of the Post H&W Plan in a manner that creates, in the reasonable assessment of Post, a risk that the Post H&W Plan would fail nondiscrimination requirements under any applicable provision of the Code or other applicable Law (including, without limitation, Code Section 105(h) with respect to any medical reimbursement plan and/or Code Section 79 with respect to any life insurance plan (or any successor Law(s) thereto)).

(b) Notwithstanding anything in this Agreement to the contrary, BellRing LLC shall be responsible for any Liabilities associated with the participation in the Post H&W Plan of BellRing Employees and former BellRing Employees (and their dependents or beneficiaries) incurred prior to terminating participation in the Post H&W Plan, no matter when such claims or Liabilities are filed, reported or payable; provided however, that any premiums, claims and other administrative costs shall be allocated or passed through in accordance with Section 5.1(a) of this Agreement and with the Master Services Agreement.

ARTICLE III
EXECUTIVE COMPENSATION

3.1 Nonqualified Deferred Compensation.

(a) The participation of employees of BellRing Inc. or any member of the BellRing Group in the Post Holdings, Inc. Deferred Compensation Plan for Key Employees and the Post Holdings, Inc. Executive Savings Investment Plan (either or both, a “Post Nonqualified Plan”) shall cease December 31, 2019. All deferral elections under the Post Nonqualified Plans shall remain in effect for the year(s) to which they relate subject to all of the terms and conditions of the Post Nonqualified Plans.

(b) Should BellRing Inc. or any member of the BellRing Group adopt a nonqualified deferred compensation plan for employees, BellRing Inc. (or the applicable member of the BellRing Group that adopted such plan) agrees to assume all Liabilities associated with payment of account balances attributable to BellRing Employees or Former BellRing Employees under the Post Nonqualified Plans, all in accordance with Code Section 409A.

(c) BellRing Inc. shall establish and adopt, effective January 1, 2020, a non-qualified deferred compensation plan for eligible members of its Board of Directors (the “BellRing Directors’ Deferred Compensation Plan”), and shall ensure that the terms of the BellRing Brands, Inc. Directors’ Deferred Compensation Plan proposed to be adopted are largely based on those of the Post Holdings, Inc. Deferred Compensation Plan for Non-Management Directors. Upon the adoption of the BellRing Brands, Inc. Directors’ Deferred Compensation Plan, BellRing Inc. shall permit and facilitate the participation in such plan of eligible directors of BellRing Inc. BellRing Inc. shall be responsible for any payments due under or Liabilities associated with the BellRing Directors’ Deferred Compensation Plan.

3.2 Equity Compensation/SEC Registration.

(a) BellRing Inc. agrees to use commercially reasonable efforts to maintain effective registration statements with the U.S. Securities and Exchange Commission (the “SEC”) with respect to the BellRing Brands, Inc. 2019 Long-Term Incentive Plan (the “BellRing LTIP”) and any successor plan and any equity awards issued under the BellRing LTIP and any successor plan, to the extent any such registration statement is required by applicable Law. BellRing Inc. shall be responsible for taking all appropriate action (i) to operate the BellRing LTIP and any successor plan so that they comply with applicable Law, including compliance with, and qualification under, Section 16 of the Securities Exchange Act of 1934, as amended; (ii) to the extent shares for issuance under the BellRing LTIP are not already registered as of the IPO Closing Date, to timely register shares for issuance under the BellRing LTIP, including the filing of a registration statement on an appropriate form with the SEC; and (iii) to timely register shares for issuance under any successor plan to the BellRing LTIP, including the filing of a registration statement on an appropriate form with the SEC.

(b) With respect to restricted stock unit awards and nonqualified stock option awards issued to employees of BellRing LLC or any member of the BellRing Group (or such entities’ predecessors) under the Post 2012 Long-Term Incentive Plan, the Post 2016 Long-Term Incentive Plan and/or the Post 2019 Long-Term Incentive Plan (each or all, the “Post LTIP”) which awards remain unsettled or outstanding as of the IPO Closing Date and any awards made to employees of BellRing Inc., BellRing LLC or a member of the BellRing Group under the Post LTIP or its successor LTIP made after the IPO Closing Date (“Outstanding Post Awards”): (i) such Outstanding Post Awards shall vest or continue to vest and be settled or forfeited according to their terms, or (ii) later, following the Effective Time, if legally permissible as determined by Post, and in the determination of the Post Board of

Directors or its Corporate Governance and Compensation Committee, and agreed to by the BellRing Inc. Board of Directors, be converted (in whole or in part, as applicable) into awards issued under the BellRing LTIP or any successor thereto, all according to the terms of the applicable Post LTIP and award agreement and the applicable BellRing LTIP and award agreement, it being understood that all or any portion of such Outstanding Post Award that is elected to be converted into awards issued under the BellRing LTIP or any successor thereto shall be forfeited under the applicable Post LTIP in exchange for such awards issued under the BellRing LTIP. Notwithstanding anything to the contrary in the foregoing, Post's Board of Directors or its Corporate Governance and Compensation Committee shall have the exclusive authority to determine the treatment of any Outstanding Post Awards in the event of a subsequent spin-off or sale of Post's retained interest in BellRing Inc. and its Subsidiaries consistent with the terms of the Post LTIP or its successor LTIP and award agreements applicable thereunder.

ARTICLE IV
CANADIAN EMPLOYMENT MATTERS

4.1 Canadian Benefit Plans.

(a) As of the IPO Closing Date, certain employees located in Canada employed by a Canadian Subsidiary of Post are performing work in Canada exclusively for the BellRing Group (the "Canadian Employees"). Post may determine, in its sole discretion, to cease the participation of the Canadian Employees in (i) the Post Foods Canada Inc. Retirement Plan for Canadian Employees maintained by Post or the Post Group (the "Post Canadian Defined Contribution Plan") and/or (ii) the Canadian health and welfare plans maintained by Post or the Post Group (the "Post Canadian Health and Welfare Benefit Plan") if (A) Post otherwise determines that it would be legally inadvisable with respect to Post, the Post Group or the Post Canadian Defined Contribution Plan or the Post Canadian Health and Welfare Benefit Plan to continue to permit such plan participation or (B) such Canadian Subsidiary of Post is no longer at least 50% owned or controlled by Post. Notwithstanding the foregoing, any continued participation of Canadian Employees in the Post Canadian Defined Contribution Plan or the Post Canadian Health and Welfare Plan is subject to the complete terms of the applicable plan.

(b) Notwithstanding anything in this Agreement to the contrary, BellRing LLC shall be responsible for: (i) any and all claims and Liabilities attributable to the Canadian Employees' (and their dependents' and beneficiaries') participation in the Post Canadian Health and Welfare Benefit Plan incurred prior to their ceasing participation, no matter when such claims are filed, reported or payable, and (ii) any and all claims or Liabilities attributable to the employment of the Canadian Employees.

4.2 Services of Canadian Employees. In the event that Post's Canadian Subsidiary terminates the employment of the Canadian Employees (other than in connection with Section 4.1(a)(B) above), Post shall work with its Canadian Subsidiary to hire employee(s) in Canada in order to fulfill Post's obligations as a Service Provider (as such term is defined under the Master Services Agreement) under the Master Services Agreement.

ARTICLE V
COSTS AND LIABILITIES

5.1 Self-funded Workers Compensation and Benefits/Compensation Costs.

(a) For so long as BellRing Inc. or any member of the BellRing Group continues to participate in, or the Canadian Employees participate in: (i) any workers compensation programs of Post or any member of the Post Group that are not insured, (ii) any health and welfare plans of Post or any member of the Post Group (whether self-funded or insured, and including but not necessarily limited to the Post H&W Plan and the Post Canadian Health and Welfare Benefit Plan, and for the sake of clarity, including any COBRA participation), (iii) severance plans or programs of Post or any member of the Post Group, (iv) the Post SIP, (v) the Post Nonqualified Plans or (vi) the Post Canadian Defined Contribution Plan, Post shall allocate or pass through, as applicable, the premiums, claims and other costs under any such program or plan, as applicable, to BellRing Inc. and members of the BellRing Group in the same manner that Post administers and allocates or passes through such premiums, claims and costs thereunder to members of the BellRing Group as of the date of this Agreement.

(b) BellRing Inc. and BellRing LLC may elect to discontinue their and any member of the BellRing Group's participation in Post's workers compensation programs that are not insured, provided that BellRing Inc. or BellRing LLC gives Post written notice of such election at least ninety (90) days prior to such discontinuance. BellRing Inc. and BellRing LLC will provide Post with all information reasonably requested by Post as it relates to BellRing Inc. and its Subsidiaries' participation in Post's workers compensation insurance programs, its withdrawal therefrom or its participation in its own workers compensation insurance programs, subject to the terms of the Master Services Agreement.

(c) As the Outstanding Post Awards are equity compensation for services rendered to BellRing LLC or member(s) of the BellRing Group (or their predecessors), the monthly actual expense and the employer-related payroll expense of the Outstanding Post Awards while outstanding and due to their settlement and/or exercise shall be borne by BellRing LLC or a member of the BellRing Group. The actual expense of the Outstanding Post Awards while outstanding will be allocated to BellRing LLC or one or more member(s) of the BellRing Group through a monthly cash settlement process via cash-settlement inter-company accounts or through any other applicable related-party accounts.

(d) BellRing LLC or the applicable employer member of the BellRing Group shall remain responsible for payment of any short-term incentive/annual bonuses or any other bonuses, incentives, performance-based compensation, or other perquisites payable to employees employed by BellRing LLC or a member of the BellRing Group.

5.2 Liabilities.

(a) As of the Effective Time, except as otherwise expressly provided for in this Agreement, BellRing LLC shall, or shall cause one or more members of the BellRing Group to, assume or retain, as applicable, and BellRing LLC shall, or shall cause one or more members of the BellRing Group, to pay, perform, fulfill and discharge, in due course in full (i) all Liabilities, whenever incurred, under all BellRing Benefit Plans and (ii) all Liabilities, whenever incurred, with respect to the employment, service, termination of employment or termination of service of all BellRing Employees and of all Former BellRing Employees, and the respective dependents and beneficiaries of such BellRing Employees and Former BellRing Employees; provided, however, that if the BellRing Employee or Former BellRing Employee to which any such Liability relates is or was an employee or service provider exclusively of BellRing Inc. at the time such Liability arose, BellRing Inc. shall pay, perform, fulfill and discharge, in due course in full, such Liability.

(b) From time to time after the Effective Time, BellRing LLC (acting directly or through a member of the BellRing Group) shall promptly reimburse Post, upon Post's reasonable request and the presentation by Post of such substantiating documentation as the payor may reasonably request, for the cost of any Liabilities satisfied by Post or any member of the Post Group that are, pursuant to this Agreement, the responsibility of BellRing Inc. or BellRing LLC or any member of the BellRing Group; provided, however, that if the BellRing Employee or Former BellRing Employee to which any such Liability relates is or was an employee or service provider exclusively of BellRing, Inc. at the time such Liability arose, BellRing Inc. shall reimburse Post for the cost of such Liabilities.

ARTICLE VI
MISCELLANEOUS

6.1 Sharing of Information. Subject to any limitations imposed by applicable Law, Post, BellRing Inc. and BellRing LLC (acting directly or through members of the Post Group or the BellRing Group, respectively) shall provide to the other and their respective representatives, agents and vendors all information relevant to the performance of the parties to this Agreement. Post, BellRing Inc. and BellRing LLC also hereby agree to enter into, or cause the applicable member of the BellRing Group to enter into, any business associate agreements that may be required for the sharing of any information pursuant to this Agreement to comply with the requirements of HIPAA.

6.2 Post Benefit Plans/Right to Amend. Nothing in this Agreement shall prohibit Post or any other member of the Post Group from amending, modifying or terminating any Post Benefit Plan at any time within its sole discretion, provided that any such amendment, modification or termination shall not relieve Post from any obligation herein.

6.3 Consent of Third Parties. If any provision of this Agreement is dependent on the consent of a third party and such consent is withheld, the parties to this Agreement shall use their commercially reasonable efforts to implement the applicable provisions of this Agreement to the fullest extent practicable. If any provision of this Agreement cannot be implemented due to the failure to obtain any such third party consent, the parties to this Agreement shall negotiate in good faith to implement the provision in a mutually satisfactory manner.

6.4 Regulatory Compliance. The parties to this Agreement shall, in connection with the actions taken pursuant to this Agreement, reasonably cooperate in making any and all appropriate filings required under the Code, ERISA and any applicable securities Laws.

6.5 Fiduciary Matters. It is acknowledged that actions required to be taken pursuant to this Agreement may be subject to fiduciary duties or standards of conduct under ERISA, and no party to this Agreement shall be deemed to be in violation of this Agreement if it fails to comply with any provisions hereof based upon its good faith determination that to do so would violate such a fiduciary duty or standard. Each party to this Agreement shall be responsible for taking such actions as are deemed necessary and appropriate to comply with its own fiduciary responsibilities and shall fully release and indemnify the other party hereto for any Liabilities caused by the failure to satisfy any such responsibility.

6.6 No Third Party Rights. The provisions of this Agreement are solely for the benefit of the parties hereto (and the other members of the Post Group and the BellRing Group) and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person or Persons any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement, including any employee, former employee or service provider (and each of the foregoing Person's dependents and beneficiaries) of the Post Group, BellRing Inc. or the BellRing Group. Furthermore, nothing in this

Agreement is (a) intended to confer upon any employee or former employee of Post, BellRing Inc. or any member of the Post Group or the BellRing Group any right to continued employment, or any recall or similar rights to an individual on layoff or any type of leave, or (b) to be construed to relieve any insurance company of any responsibility for any employee benefit under any Benefit Plan or any other Liability. Nothing in this Agreement is intended as an amendment to any Benefit Plan or employment practice.

6.7 Relation to Other Transaction Documents. In the event of a conflict between this Agreement and the Transaction Agreement, this Agreement shall control. This Agreement, together with the applicable portions of the Transaction Agreement and the Master Services Agreement, constitute the entire agreement between the parties to this Agreement with respect to the subject matter of this Agreement.

6.8 Incorporation by Reference. This Agreement constitutes an “Ancillary Agreement” as defined by the Transaction Agreement, and any provision of the Transaction Agreement which applies to an Ancillary Agreement shall be deemed to be incorporated herein by reference as though set forth herein, *mutatis mutandis*, and made a part of this Agreement.

6.9 Effective Date of this Agreement. Once executed by Post, BellRing Inc. and BellRing LLC, this Agreement shall be effective upon the Effective Time.

6.10 Amendment. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of Post, BellRing Inc. and BellRing LLC. Notwithstanding the foregoing, in the event that BellRing Inc. directly or indirectly acquires or creates a subsidiary which is not otherwise a direct or indirect subsidiary of BellRing LLC and which employs employees, the parties to this Agreement agree to re-negotiate this Agreement in good faith in order to, among other items, reflect that BellRing Inc. or such new subsidiary shall be responsible for Liabilities associated with such employees, including but not limited to their (and their dependents’) participation in BellRing Benefit Plans and/or Post Benefit Plans.

6.11 Termination.

(a) Except as provided in subsection (b) below, this Agreement may be terminated only by the mutual consent of each of the parties to this Agreement.

(b) Upon the occurrence of a Change of Control (as defined in this Agreement) of BellRing Inc. or BellRing LLC, or upon the occurrence of a change in control (as defined in the Post Holdings, Inc. 2019 Long-Term Incentive Plan) of Post, Post or its successor, as applicable, shall have the right, upon delivery of written notice to BellRing Inc. and BellRing LLC, to terminate this Agreement.

6.12 Survival. Except as expressly set forth in this Agreement, the provisions contained in:

(a) Sections 2.2(b) (Health and Welfare Liabilities), 3.1(b) (Nonqualified Deferred Compensation Liabilities), 3.2(b)(ii) (Outstanding Post Awards – Potential Later Conversion), 4.1(b) (Canadian Liabilities), 5.1(a), 5.1(c) and 5.1(d) (Certain Benefit and Program Costs), 5.2 (Liabilities), 6.5 (Fiduciary Matters) and 6.6 (No Third-Party Rights) of this Agreement any Liabilities for the breach of any obligations contained herein;

(b) Article V (Mutual Releases; Indemnification), Article VIII (Dispute Resolution) and Sections 9.4 (Governing Law), 9.7 (Notices), and 9.17(b) (No Recourse) of the Transaction Agreement incorporated herein by reference (as set forth in Section 6.8 of this Agreement); and

(c) any other provision of the Transaction Agreement incorporated herein by reference which survives the Formation Transactions and the IPO, or the termination or expiration of the Transaction Agreement,

shall survive the termination or expiration of this Agreement and shall remain in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be signed by their authorized representatives as of the date first above written.

POST HOLDINGS, INC.

By: /s/ Diedre J. Gray
Name: Diedre J. Gray
Title: Executive Vice President, General Counsel and
Chief Administrative Officer, Secretary

BELLRING BRANDS, INC.

By: /s/ Darcy Horn Davenport
Name: Darcy Horn Davenport
Title: President and Chief Executive Officer

BELLRING BRANDS, LLC

By: /s/ Darcy Horn Davenport
Name: Darcy Horn Davenport
Title: President and Chief Executive Officer

[Signature Page to Employee Matters Agreement]

INVESTOR RIGHTS AGREEMENT

dated as of

October 21, 2019

among

BELLRING BRANDS, INC.

and

POST HOLDINGS, INC.

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INVESTOR RIGHTS AGREEMENT

THIS INVESTOR RIGHTS AGREEMENT dated as of October 21, 2019 (this “Agreement”) is among (i) BellRing Brands, Inc., a Delaware corporation (the “Company”), (ii) Post Holdings, Inc., a Missouri corporation (“Post”), and (iii) other Persons (as defined below) party hereto from time to time.

RECITALS

WHEREAS, the parties hereto are entering into this Agreement to provide (i) certain registration rights under the Securities Act (as defined below) and applicable state securities laws to each Stockholder (as defined below) with respect to Registrable Securities (as defined below) each may hold and (ii) certain governance rights to Post.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01. Definitions.

(a) As used herein, the following terms have the following meanings:

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purpose of this definition, the term “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Applicable Governance Rules” means applicable federal and Delaware laws and the rules of the NYSE relating to the Board and the corporate governance of the Company, including, without limitation, Rule 10A-3 of the Exchange Act and NYSE Rule 303A, in each case, subject to applicable phase-in periods.

“Automatic Shelf Registration Statement” means an “automatic shelf registration statement” as defined in Rule 405 under the Securities Act.

“BellRing LLC” means BellRing Brands, LLC, a Delaware limited liability company.

“BellRing LLC Agreement” means the Amended and Restated Limited Liability Company Agreement of BellRing LLC, dated as of the date hereof, as it may be amended from time to time.

“BellRing LLC Units” means the Nonvoting Common Units of BellRing LLC as defined in the BellRing LLC Agreement.

“beneficial ownership” and “beneficially own” and similar terms have the meaning set forth in Rule 13d-3 under the Exchange Act.

“Board” means the board of directors of the Company.

“Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

“Bylaws” means the Amended and Restated Bylaws of the Company, as the same may be amended, modified, supplemented and/or restated from time to time.

“Certificate of Incorporation” means the Amended and Restated Certificate of Incorporation of the Company, as the same may be amended, modified, supplemented and/or restated from time to time.

“Class A Common Stock” means the Class A common stock, par value \$0.01 per share, of the Company.

“Class B Common Stock” means the Class B common stock, par value \$0.01 per share, of the Company.

“Company Securities” means (i) the Class A Common Stock, (ii) any securities of the Company or any successor or assign of the Company into which such Class A Common Stock is reclassified or reconstituted or into which such Class A Common Stock is converted or otherwise exchanged in connection with a split or combination of shares, recapitalization, merger, sale of assets, consolidation or other reorganization or otherwise or (iii) any securities received as a dividend or a distribution in respect of the securities described in clauses (i) or (ii) above.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC thereunder.

“FINRA” means the Financial Industry Regulatory Authority.

“Free Writing Prospectus” means any “free writing prospectus” as defined in Rule 405 under the Securities Act relating to the Registrable Securities included in the applicable Registration Statement.

“Independent Director” means a director who qualifies as an “independent director” of the Company under the NYSE Listed Company Manual.

“Initial Public Offering” means the initial underwritten public offering of the Class A Common Stock of the Company on October 21, 2019.

“NYSE” means the New York Stock Exchange.

“Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, and shall include any successor (by merger or otherwise) thereto.

“Post Party” means Post and its Affiliates (other than the Company and its Subsidiaries).

“Post Nominee” means any individual nominated or designated by Post for election or appointment to the Board in accordance with, and subject to the terms and conditions of, Article III of this Agreement.

“Post Stockholder” means each Post Party that is a Stockholder.

“Public Offering” means an underwritten public offering of Company Securities pursuant to an effective registration statement under the Securities Act, other than pursuant to a registration statement on Form S-4 or Form S-8 or any similar or successor form under the Securities Act.

“Registering Stockholder” means, with respect to any Registration Statement, each Stockholder whose Registrable Securities are or are to be registered pursuant to such Registration Statement.

“Registrable Class Securities” means the Registrable Securities and any other securities of the Company that are of the same class as the relevant Registrable Securities.

“Registrable Securities” means, at any time, any Company Securities beneficially owned (whether beneficially owned as of the date hereof or hereinafter beneficially owned) by a Stockholder until (i) a registration statement covering such securities has been declared effective by the SEC and such securities have been disposed of pursuant to such effective registration statement, (ii) such securities are sold pursuant to Rule 144 (or any similar provisions then in force) under the Securities Act, (iii) such securities are otherwise transferred, assigned, sold, conveyed or otherwise disposed of and thereafter such securities may be resold without subsequent registration under the Securities Act or (iv) with respect to any such securities held by any single Stockholder (or group of Stockholders that are aggregated for purposes of Rule 144), all of such securities held by any Stockholder or group of Stockholders that are able to be sold in a single transaction pursuant to Rule 144 (or any similar provisions then in force) and such securities of such Stockholder (or group of Stockholders) represent no more than 2.5% of the relevant class of Company Securities.

“Registration Expenses” means any and all expenses incident to the performance of or compliance with any registration or marketing of Registrable Securities, regardless of whether such Registration Statement is declared effective, including all (i) registration and filing fees, and all other fees and expenses payable in connection with the listing of securities on any securities exchange or automated interdealer quotation system, (ii) fees and expenses incurred in complying with any securities or “blue sky” laws (including reasonable fees and disbursements of counsel in connection with “blue sky” qualifications of the Registrable Securities as may be set forth in any underwriting agreement), (iii) expenses in connection with the preparation, printing, mailing and delivery of any registration statements, prospectuses and other documents in connection therewith and any amendments or supplements thereto, (iv) security engraving and printing expenses, (v) internal expenses of the Company (including all salaries and expenses of its officers and employees performing legal or accounting duties), (vi) reasonable fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company (including the expenses relating to any comfort letters or costs associated with the delivery by independent certified public accountants of any “comfort” letters requested pursuant to Section 2.04(h) or any special audits incidental to or required by any registration or qualification), (vii) reasonable fees and expenses of any special experts retained by the Company in connection with such registration, (viii) reasonable fees, out-of-pocket costs and expenses of one firm of counsel selected by the holder(s) of a majority of the Registrable Securities covered by each Registration Statement (the “Holder’s Counsel”), (ix) fees and expenses in connection with any review by FINRA of the underwriting arrangements or other terms of the offering, and all fees and expenses of any qualified independent underwriter, including the reasonable fees and expenses of any counsel thereto, (x) fees and disbursements of underwriters customarily paid by issuers or sellers of securities, but excluding any underwriting fees, discounts and commissions attributable to the sale of Registrable Securities, (xi) costs of printing and producing any agreements among underwriters, underwriting agreements, any “blue sky” or legal investment memoranda and any selling agreements and other documents in connection with the offering, sale or delivery of the Registrable Securities, (xii) transfer agents’ and registrars’ fees and expenses and the fees and expenses of any other agent or trustee appointed in connection with such offering, (xiii) expenses relating to any analyst or investor presentations or any “road shows” undertaken in connection with the registration, marketing or selling of the Registrable Securities, (xiv) fees and expenses payable in connection with any ratings of the Registrable Securities, including expenses relating to any presentations to rating agencies, (xv) all out-of-pocket costs and expenses incurred by the Company or its appropriate officers in connection with their compliance with Section 2.04(m) and (xvi) any liability insurance or other premiums for insurance obtained in connection with any Demand Registration, Piggyback Registration or Shelf Registration pursuant to the terms of this Agreement.

“Registration Statement” means any registration statement of the Company under the Securities Act that covers any of the Registrable Securities pursuant to the provisions of this Agreement.

“Requesting Stockholder” means, with respect to any Demand Registration or Shelf Registration, any Stockholder holding any Registrable Securities initially making the request for such Demand Registration or Shelf Registration.

“Rule 144” means Rule 144 under the Securities Act.

“SEC” means the U.S. Securities and Exchange Commission or any successor governmental agency.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Shares” means, collectively, the shares of Class A Common Stock and the share of Class B Common Stock.

“Shelf Registered Securities” means any Registrable Securities whose offer and sale is registered pursuant to a Registration Statement filed in connection with a Shelf Registration (including an Automatic Shelf Registration Statement).

“Specified Period” means 90 days; provided that such period may be extended as may be reasonably requested by the managing or co-managing underwriter of a registered offering required hereunder to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA rules or any successor provisions or amendments thereto.

“Stockholder” means, at any time, each Post Party or any transferee or assignee of a Post Party pursuant to Section 2.12 of this Agreement, beneficially owning Company Securities or BellRing LLC Units that shall be a party to or bound by this Agreement, so long as such Person shall beneficially own any Company Securities or BellRing LLC Units.

“Subsidiary” means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions at the time are directly or indirectly owned by such Person.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Alternative Transaction	Section 2.02(d)
Audit Committee Independent Directors	Section 3.01(a)(iv)
Committees	Section 3.01(c)
Company	Preamble
Damages	Section 2.05
Demand Registration	Section 2.01(a)
Determination Date	Section 2.02(f)
Holder’s Counsel	Section 1.01(a) (Definition of “Registration Expenses”)

<u>Term</u>	<u>Section</u>
Indemnified Party	Section 2.07
Indemnifying Party	Section 2.07
Inspectors	Section 2.04(g)
Issuer Free Writing Prospectus	Section 2.14
Maximum Offering Size	Section 2.01(d)
Piggyback Registration	Section 2.02(h)(i)
Post	Preamble
Records	Section 2.04(g)
Registration Actions	Section 2.01(e)
Requested Shelf Registered Securities	Section 2.02(b)
Shelf Public Offering	Section 2.02(b)
Shelf Public Offering Notice	Section 2.02(b)
Shelf Public Offering Request	Section 2.02(b)
Shelf Public Offering Requesting Stockholder	Section 2.02(b)
Shelf Registration	Section 2.02(a)
Stockholder Parties	Section 2.05
Suspension Notice	Section 2.01(e)
Suspension Period	Section 2.01(e)
Well-Known Seasoned Issuer	Section 2.02(f)

Section 1.02. Other Definitional and Interpretative Provisions. The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to laws, rules, regulations and forms shall be deemed to be references to such laws, rules, regulations and forms as amended, succeeded or replaced.

ARTICLE II. REGISTRATION RIGHTS

Section 2.01. Demand Registration.

(a) At any time following the Initial Public Offering, any Stockholder may give a written request to the Company to effect the registration under the Securities Act (other than pursuant to a registration statement on Form S-4 or Form S-8 or any similar or successor form under the Securities Act) of all or any portion of such Requesting Stockholder’s Registrable Securities, which written request shall specify the number of Registrable Securities to be registered and the intended method of disposition thereof. Such registration may be for the offering of the Stockholder’s Registrable Securities on a delayed

or continuous basis under Rule 415 under the Securities Act. At any time the Company is eligible to use Form S-3ASR, such registration shall occur on such form. Upon the receipt of such written request, the Company shall promptly give notice (via electronic transmission) of such requested registration (each such registration shall be referred to herein as a “Demand Registration”) at least 10 Business Days prior to the anticipated filing date of the Registration Statement relating to such Demand Registration to any other Stockholders. Thereafter, the Company shall use its commercially reasonable efforts to effect, as soon as possible, the registration under the Securities Act of:

(i) all Registrable Securities for which the Requesting Stockholder has requested registration under this Section 2.01;

(ii) all other Registrable Securities of the same class or series as those requested to be registered by the Requesting Stockholder that any other Stockholder has requested the Company register by request received by the Company and Post within 10 Business Days after such Stockholders receive the Company’s notice of the Demand Registration; and

(iii) any Company Securities to be offered or sold by the Company;

all to the extent necessary to permit the disposition (in accordance with the intended methods thereof as described in the Requesting Stockholder’s written request) of the Registrable Securities so to be registered; provided that the Company shall not be obligated to effect (1) any such Demand Registration (i) within the Specified Period after the effective date of any other registration statement of the Company in connection with which Stockholders were given Piggyback Registration rights (other than a registration statement filed in connection with an employee benefit plan or business combination transaction or a registration statement on Form S-8 or Form S-4) or (ii) in accordance with Section 2.01(e), or (2) any Demand Registration if the aggregate proceeds expected to be received from the sale of the Registrable Securities requested to be included in such Demand Registration is less than \$25,000,000. A Requesting Stockholder may require any Demand Registration that involves a Public Offering of at least \$25,000,000 to be conducted as an underwritten offering. Notwithstanding the foregoing, a Requesting Stockholder may request that a Demand Registration take the form of a primary offering by the Company of a number of shares of Class A Common Stock, the net proceeds of which shall be used by the Company and BellRing LLC, pursuant to and subject to the terms and conditions of the BellRing LLC Agreement, to acquire for cash the same number of BellRing LLC Units, in which case, (i) the Demand Registration shall cover the primary sale of the number of shares of Class A Common Stock requested by the Requesting Stockholder, (ii) the Requesting Stockholder shall exercise its right, pursuant to Article IX of the BellRing LLC Agreement, to submit for redemption, as provided under and subject to the terms and conditions of the BellRing LLC Agreement, the number of BellRing LLC Units that is equal to the number of shares of Class A Common Stock sold in such Public Offering, contingent on (among other things) the closing of such Public Offering and receipt by the Company of net proceeds therefrom, (iii) upon the Company’s receipt of the net proceeds from such Public Offering, BellRing LLC shall elect, pursuant to Article IX of the BellRing LLC Agreement, to acquire from the Requesting Stockholder the number of BellRing LLC Units equal to the number of shares of Class A Common Stock sold pursuant to such Public Offering in exchange for such net proceeds and (iv) except where the context otherwise requires, references to “Registrable Securities” with respect to such Demand Registration shall be to such shares of Class A Common Stock requested to be offered in such Public Offering.

(b) At any time prior to the effective date of the Registration Statement relating to such Demand Registration, the Requesting Stockholder may, upon notice to the Company, revoke such request in whole or in part with respect to the number of shares of Registrable Securities requested to be included in such Registration Statement, without liability to any of the other Registering Stockholders.

(c) The Company shall be liable for and pay all Registration Expenses in connection with any Demand Registration, regardless of whether such Demand Registration becomes effective.

(d) If a Demand Registration involves a Public Offering and the lead managing underwriter advises the Company and the Requesting Stockholder that, in its view, the number of shares of Registrable Securities requested to be included in such registration (including any securities that the Company proposes to be included that are not Registrable Securities) exceeds the largest number of shares that can be sold without having a material and adverse effect on such offering, including the price at which such shares can be sold (the "Maximum Offering Size"), the Company shall include in such registration, in the priority listed below, up to the Maximum Offering Size:

(i) first, all Registrable Securities requested to be registered by the Requesting Stockholder and all other Registering Stockholders pro rata on the basis of the relative number of shares of Registrable Securities so requested to be included in such registration by each such Registering Stockholder;

(ii) second, any securities proposed to be registered by the Company; and

(iii) third, any securities proposed to be registered for the account of any other Persons, with such priorities among them as the Company shall determine.

(e) Notwithstanding anything to the contrary contained in this Agreement, but subject to the limitation set forth in the next succeeding paragraph, the Company shall be entitled to suspend its obligation to file (but not the preparation of) any Registration Statement in connection with a Demand Registration and any Shelf Registration, file any amendment to such a Registration Statement, furnish any supplement or amendment to a prospectus included in such a Registration Statement, make any other filing with the SEC, cause such a Registration Statement or other filing with the SEC to become or remain effective or take any similar action (collectively, "Registration Actions") upon (i) the issuance by the SEC of a stop order suspending the effectiveness of any such Registration Statement or the initiation of proceedings with respect to such a Registration Statement under Section 8(d) or Section 8(e) of the Securities Act, (ii) the Board's determination, in its good faith judgment, that any such Registration Action should not be taken because it would reasonably be expected to materially interfere with or require the public disclosure of any material corporate development or plan, including any material financing, securities offering, acquisition, disposition, corporate reorganization or merger or other transaction involving the Company or any of its Subsidiaries or (iii) the Company possessing material non-public information the disclosure of which the Board determines, in its good faith judgment, would reasonably be expected to not be in the best interests of the Company. Upon the occurrence of any of the conditions described in (i), (ii) or (iii) above, the Company shall give prompt notice of such suspension (and whether such action is being taken pursuant to (i), (ii) or (iii) above) (a "Suspension Notice") to the Stockholders. Upon the termination of such condition, the Company shall give prompt notice thereof to the Stockholders and shall promptly proceed with all Registration Actions that were suspended pursuant to this paragraph.

The Company may only suspend Registration Actions pursuant to the preceding paragraph on two occasions during any one-year period for a reasonable time specified in the Suspension Notice but not exceeding an aggregate of 90 days (which period may not be extended or renewed) (each such occasion, a "Suspension Period"). Each Suspension Period shall be deemed to begin on the date the relevant Suspension Notice is given to the Stockholders and shall be deemed to end on the earlier to occur of (i) the date on which the Company gives the Stockholders a notice that the Suspension Period has terminated and (ii) the date on which the number of days during which a Suspension Period has been in effect exceeds the 90-day period. If the filing of any Demand Registration or Shelf Registration is suspended pursuant to this Section 2.01(e), once the Suspension Period ends, the Requesting Stockholder may

request a new Demand Registration and a Stockholder that requested a Shelf Registration may request a new Shelf Registration. Notwithstanding anything to the contrary in this Agreement, the Company shall not be in breach of, or have failed to comply with, any obligation under this Agreement (including without limitation obligations under this Section 2.01(e)) where the Company acts or omits to take any action in order to comply with applicable law, any interpretation of the staff of the SEC or any order or decree of any court or governmental agency.

(f) The Company shall have no obligation to file a Registration Statement under this Section 2.01 or Section 2.02 or proceed with Registration Actions related thereto during any time such filing or Registration Actions are prohibited by any applicable underwriting or lock-up agreement to which the Company is a party relating to the Initial Public Offering or an offering pursuant to a Registration Statement.

Section 2.02. Shelf and Piggyback Registration.

(a) At any time when (i) the Company is eligible to use Form S-3 in connection with a secondary public offering of its equity securities and (ii) a Shelf Registration on a Form S-3 registering Registrable Securities for resale is not then effective (subject to any applicable Suspension Period), upon the written request of any Stockholder, the Company shall use its commercially reasonable efforts to register, under the Securities Act on Form S-3 for an offering on a delayed or continuous basis pursuant to Rule 415 under the Securities Act (a "Shelf Registration"), the offer and sale of all or a portion of the Registrable Securities owned by such Requesting Stockholder. Upon the receipt of such written request, the Company shall promptly give notice (via electronic transmission) of such requested Shelf Registration at least 10 Business Days prior to the anticipated filing date of such Shelf Registration to any Stockholders, and such notice shall describe the proposed Shelf Registration, the intended method of disposition of such Registrable Securities and any other information that at the time would be appropriate to include in such notice, and offer such Stockholders the opportunity to register such number of Registrable Securities as each such Stockholder may request in writing to the Company, given within 10 Business Days after such Stockholders receive the Company's notice of the Shelf Registration. The "Plan of Distribution" section of such Shelf Registration shall permit all lawful means of disposition of Registrable Securities, including firm-commitment underwritten public offerings, block trades, agented transactions, sales directly into the market, purchases or sales by brokers and sales not involving a public offering. With respect to each Shelf Registration, the Company shall, subject to any Suspension Period, (i) as promptly as practicable after the written request of the Requesting Stockholder, file a Registration Statement and (ii) use its commercially reasonable efforts to cause such Registration Statement to be declared effective as promptly as practicable, and remain effective until the date set forth in Section 2.04(a)(ii). No Stockholder shall be entitled to include any of its Registrable Securities in a Shelf Registration unless such Stockholder has complied with Section 2.15. The Company shall not be required to amend a Shelf Registration (or the related prospectus) to add or change the disclosure regarding selling security holders during any Suspension Period. The obligations set forth in this Section 2.02(a) shall not apply if the Company has a currently effective Automatic Shelf Registration Statement covering all Registrable Securities in accordance with Section 2.02(f) and has otherwise complied with its obligations pursuant to this Agreement.

(b) Upon written request by a Requesting Stockholder holding Shelf Registered Securities (such Stockholder, the "Shelf Public Offering Requesting Stockholder"), which request (the "Shelf Public Offering Request") shall specify the class or series and amount of such Shelf Public Offering Requesting Stockholder's Shelf Registered Securities to be sold (the "Requested Shelf Registered Securities"), the Company shall (subject to any Suspension Period) perform its obligations hereunder with respect to the sale of such Requested Shelf Registered Securities in the form of a firm commitment underwritten public offering (unless otherwise consented to by the Shelf Public Offering Requesting Stockholder) (a "Shelf

Public Offering”) if the aggregate proceeds expected to be received from the sale of the Requested Shelf Registered Securities equals or exceeds \$25,000,000. Promptly upon receipt of a Shelf Public Offering Request, the Company shall provide notice (the “Shelf Public Offering Notice”) of such proposed Shelf Public Offering (which notice shall state the material terms of such proposed Shelf Public Offering, to the extent known, as well as the identity of the Shelf Public Offering Requesting Stockholder) to any other Stockholders holding Shelf Registered Securities. Such other Stockholders may, by written request to the Company and the Shelf Public Offering Requesting Stockholder, within two Business Days after receipt of such Shelf Public Offering Notice, include up to all of their Shelf Registered Securities of the same class or series as the Requested Shelf Registered Securities in such proposed Shelf Public Offering; provided, that any such Shelf Registered Securities shall be sold subject to the same terms as are applicable to the Shelf Registered Securities of the Shelf Public Offering Requesting Stockholder. No Stockholder shall be entitled to include any of its Registrable Securities in a Shelf Public Offering unless such Stockholder has complied with Section 2.15. The lead managing underwriter or underwriters selected for such Shelf Public Offering shall be selected in accordance with Section 2.04(f)(i).

(c) In a Shelf Public Offering, if the lead managing underwriter advises the Company and the Shelf Public Offering Requesting Stockholder that, in its view, the number of shares of Registrable Securities requested to be included in such Shelf Public Offering (including any securities that the Company proposes to be included that are not Registrable Securities) exceeds the Maximum Offering Size, the Company shall include in such Shelf Public Offering, in the priority listed below, up to the Maximum Offering Size:

(i) first, all Shelf Registered Securities requested to be included in the Shelf Public Offering by the Shelf Public Offering Requesting Stockholder and all other Stockholders, pro rata on the basis of the relative number of shares of Shelf Registered Securities so requested to be included in the Shelf Public Offering by each such Stockholder;

(ii) second, any securities proposed to be included in the Shelf Public Offering by the Company; and

(iii) third, any securities proposed to be included in the Shelf Public Offering for the account of any other Persons, with such priorities among them as the Company shall determine.

(d) The Company shall use its commercially reasonable efforts to cooperate in a timely manner with any request of the Stockholders in respect of any block trade, hedging transaction or other transaction that is registered pursuant to a Shelf Registration that is not a firm commitment underwritten offering (each, an “Alternative Transaction”), including, without limitation, entering into customary agreements with respect to such Alternative Transactions (and providing customary representations, warranties, covenants and indemnities in such agreements) as well as providing other reasonable assistance in respect of such Alternative Transactions of the type applicable to a Public Offering subject to Section 2.04, to the extent customary for such transactions. The Company shall bear all Registration Expenses in connection with any Shelf Registration, any Shelf Public Offering or any other transaction (including any Alternative Transaction) registered under a Shelf Registration pursuant to this Section 2.02, whether or not such Shelf Registration becomes effective or such Shelf Public Offering or other transaction is completed; provided, however, that if the Shelf Public Offering Requesting Stockholder revokes its request in whole with respect to a Shelf Public Offering, then the Shelf Public Offering Requesting Stockholder shall reimburse the Company for and/or pay directly all Registration Expenses incurred relating to such Shelf Public Offering.

(e) After the Registration Statement with respect to a Shelf Registration is declared effective but subject to the Suspension Period, upon written request by one or more Stockholders (which written request shall specify the amount of such Stockholders' Registrable Securities to be registered), the Company shall, as promptly as practicable after receiving such request, (i) if it is eligible for use of Form S-3 in connection with a secondary public offering of its equity securities, or if such Registration Statement is an Automatic Shelf Registration Statement, file a prospectus supplement to include such Stockholders as selling stockholders in such Registration Statement or (ii) if it is not eligible for use of Form S-3 in connection with a secondary public offering of its equity securities, file a post-effective amendment to the Registration Statement to include such Stockholders in such Shelf Registration and use commercially reasonable efforts to have such post-effective amendment declared effective.

(f) Upon the Company becoming aware that it is a "Well-Known Seasoned Issuer" (as defined in Rule 405 under the Securities Act), (i) the Company shall give written notice to all of the Stockholders as promptly as practicable but in no event later than 10 Business Days thereafter, and such notice shall describe, in reasonable detail, the basis on which the Company has become a Well-Known Seasoned Issuer, and (ii) the Company shall, as promptly as practicable and subject to any Suspension Period, register, under an Automatic Shelf Registration Statement, the sale of all of the Registrable Securities in accordance with the terms of this Agreement. The Company shall use its commercially reasonable efforts to file such Automatic Shelf Registration Statement as promptly as practicable, but in no event later than 20 Business Days after it becomes a Well-Known Seasoned Issuer, and to cause such Automatic Shelf Registration Statement to remain effective thereafter until the date set forth in Section 2.04(a)(ii). The Company shall give written notice of filing such Registration Statement to all of the Stockholders as promptly as practicable thereafter. The Company shall not be required to include any Stockholder as a selling stockholder in any Registration Statement or prospectus unless such Stockholder has complied with Section 2.15. At any time after the filing of an Automatic Shelf Registration Statement by the Company, if it is reasonably likely that it will no longer be a Well-Known Seasoned Issuer as of a future determination date (the "Determination Date"), at least 20 Business Days prior to such Determination Date, the Company shall (A) give written notice thereof to all of the Stockholders as promptly as practicable but in no event later than 10 Business Days prior to such Determination Date and (B) if the Company is eligible to file a Registration Statement on Form S-3 with respect to a secondary public offering of its equity securities, file a Registration Statement on Form S-3 with respect to a Shelf Registration in accordance with Section 2.02(a), treating all selling Stockholders identified as such in the Automatic Shelf Registration Statement (and amendments or supplements thereto) as Requesting Stockholders and use all commercially reasonable efforts to have such Registration Statement declared effective prior to the Determination Date. Any registration pursuant to this Section 2.02(f) shall be deemed a Shelf Registration for purposes of this Agreement.

(g) Notwithstanding anything to the contrary, no Shelf Registration pursuant to this Section 2.02 shall be deemed a Demand Registration for purposes of Section 2.01.

(h) Piggyback Registration.

(i) If the Company proposes to register any Company Securities under the Securities Act (other than a registration on Form S-8 or Form S-4 relating to Shares or any other class of Company Securities issuable upon exercise of employee stock options or in connection with any employee benefit or similar plan of the Company or in connection with a direct or indirect acquisition by the Company of another Person) other than in connection with a rights offering, whether or not for sale for its own account, the Company shall each such time give prompt notice (via electronic transmission) at least 10 Business Days prior to the anticipated filing date of the registration statement relating to such registration to each Stockholder, which notice shall offer such Stockholder the opportunity to include in such registration statement the number of Registrable Securities of the same class or series as those proposed to be registered as each such Stockholder may request (a "Piggyback Registration"), subject to the provisions of Section 2.02(h)(ii). Upon the request of any such Stockholder made within 10 Business Days after the

receipt of notice from the Company regarding a Piggyback Registration (which request shall specify the number of Registrable Securities intended to be registered by such Stockholder), the Company shall use its commercially reasonable efforts to effect the registration under the Securities Act of all Registrable Securities that the Company has been so requested to register by all such Requesting Stockholders, to the extent requisite to permit the disposition of the Registrable Securities so to be registered in accordance with the plan of distribution intended by the Company for such registration statement; provided that (i) if such registration involves a Public Offering, all such Registering Stockholders requesting to be included in the Company's registration must sell their Registrable Securities to the underwriters selected as provided in Section 2.04(f)(i) on the same terms and conditions as apply to the Company and (ii) if, at any time after giving notice of its intention to register any Company Securities pursuant to this Section 2.02(h) and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register such securities, the Company shall give notice to all Registering Stockholders and, thereupon, shall be relieved of its obligation to register any Registrable Securities in connection with such registration. No registration effected under this Section 2.02(h) shall relieve the Company of its obligations to effect a Demand Registration to the extent required by Section 2.01 or a Shelf Registration to the extent required by Section 2.02. The Company shall pay all Registration Expenses in connection with each Piggyback Registration.

(ii) If a Piggyback Registration involves a Public Offering (other than any Demand Registration, in which case the provisions with respect to priority of inclusion in such offering set forth in Section 2.01(d) shall apply) and the lead managing underwriter advises the Company that, in its view, the number of Registrable Securities that the Company and such Registering Stockholders intend to include in such registration exceeds the Maximum Offering Size, the Company shall include in such registration, in the following priority, up to the Maximum Offering Size:

(A) first, so much of the Company Securities proposed to be registered for the account of the Company as would not cause the offering to exceed the Maximum Offering Size;

(B) second, all Registrable Securities requested to be included in such registration by any Registering Stockholders pursuant to this Section 2.02(h) (allocated, if necessary for the offering not to exceed the Maximum Offering Size, pro rata among such Stockholders on the basis of the relative number of shares of Registrable Securities so requested to be included in such registration by each such Stockholder); and

(C) third, any securities proposed to be registered for the account of any other Persons with such priorities among them as the Company shall determine.

Section 2.03. Lock-Up Agreements.

(a) Each Stockholder hereby agrees that it will not effect any public sale or distribution (including sales pursuant to Rule 144) of Registrable Securities (i) during (A) the 10 days prior to and the 90-day period beginning on the effective date of the registration of such Registrable Securities in connection with a Public Offering (which period following the effective date may, in each case, be extended as reasonably requested by the underwriters participating in such Public Offering to accommodate regulatory restrictions on (I) the publication or other distribution of research reports and (II) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA rules or any successor provisions or amendments thereto) or (B) such shorter period as the underwriters participating in such Public Offering may require, and (ii) upon notice from the Company of the

commencement of a Public Offering in connection with any Shelf Registration, during (A) 10 days prior to and the 90-day period beginning on the date of commencement of such Public Offering or (B) such shorter period as the underwriters participating in such Public Offering may require, in each case except as part of such Public Offering. Each Stockholder agrees to execute a lock-up agreement in favor of the underwriters in form and substance reasonably acceptable to the Company and the underwriters to such effect and, in any event, that the underwriters in any relevant offering shall be third party beneficiaries of this Section 2.03(a). The lock-up agreement to be executed by each Stockholder pursuant to this Section 2.03(a) shall be no less favorable to such Stockholder than the lock-up agreements (or provisions in any underwriting agreement) executed by the Company or any of the executive officers or directors of the Company pursuant to Section 2.03(b).

(b) The Company shall not effect any public sale or distribution of securities of the same type and class as Registrable Securities (except pursuant to registrations on Form S-8 or Form S-4) (i) with respect to any Public Offering pursuant to a Demand Registration or any Piggyback Registration in which the holders of Registrable Securities are participating, during (A) the 10 days prior to and the 90-day period beginning on the effective date of such registration (which period following the effective date may, in each case, be extended as reasonably requested by the underwriters participating in such Public Offering to accommodate regulatory restrictions on (I) the publication or other distribution of research reports and (II) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA rules or any successor provisions or amendments thereto) or (B) such shorter period as the underwriters participating in such Public Offering may require, and (ii) upon notice from any holder(s) of Registrable Securities subject to a Shelf Registration that such holder(s) intend to effect a Public Offering of Registrable Securities pursuant to such Shelf Registration (upon receipt of which, the Company will promptly notify all other Stockholders of the date of commencement of such Public Offering), during (A) the 10 days prior to and the 90-day period beginning on the date of commencement of such Public Offering and (B) such shorter period as the underwriters participating in such Public Offering may require), in each case except as part of such Public Offering. To the extent required by any underwriter participating in such Public Offering, the Company shall use commercially reasonable efforts to cause its executive officers and directors to execute customary lock-up agreements in connection with such Public Offering, which lock-up agreements shall not have a duration shorter than that of the lock-up agreement or provisions applicable to the Company.

Section 2.04. Registration Procedures. Whenever a Stockholder requests that any Registrable Securities be registered pursuant to Section 2.01 or Section 2.02, subject to the provisions of such Sections, the Company shall use its commercially reasonable efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof as soon as reasonably practicable and, in connection with any such request:

(a) The Company shall as soon as reasonably practicable prepare and file with the SEC a Registration Statement on any form for which the Company then qualifies or that counsel for the Company shall deem appropriate and which form shall be available for the sale of the Registrable Securities to be registered thereunder in accordance with the intended method of distribution thereof, and use its commercially reasonable efforts to cause such filed Registration Statement to become and remain effective for a period of (i) not less than 180 days (or, if sooner, until all Registrable Securities have been sold under such Registration Statement), or (ii) in the case of a Shelf Registration, until the earlier of the date (x) on which all of the securities covered by such Shelf Registration are no longer Registrable Securities and (y) on which the Company cannot extend the effectiveness of such Shelf Registration because it is no longer eligible for use of Form S-3; subject in each case to any Suspension Period.

(b) Prior to filing a Registration Statement or related prospectus or any amendment or supplement thereto, or before using any Free Writing Prospectus, the Company shall provide each Registering Stockholder, the Holders' Counsel and each underwriter, if any, with an adequate and appropriate opportunity to review and comment on such Registration Statement, each prospectus included therein (and each amendment or supplement thereto) and each Free Writing Prospectus proposed to be filed with the SEC, and thereafter the Company shall furnish to such Registering Stockholder, the Holders' Counsel and underwriter, if any, such number of copies of such Registration Statement, each amendment and supplement thereto filed with the SEC (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such Registration Statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424, Rule 430A, Rule 430B or Rule 430C under the Securities Act, each Free Writing Prospectus and such other documents as such Registering Stockholder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Registering Stockholder. In addition, the Company shall, as expeditiously as practicable, keep Holders' Counsel advised in writing as to the initiation and progress of any registration under Section 2.01 or Section 2.02 and provide Holders' Counsel with copies of all correspondence (including any comment letter) with the SEC, any self-regulatory organization or other governmental agency in connection with any such Registration Statement. Each Registering Stockholder shall have the right to request that the Company modify any information pertaining to such Registering Stockholder contained in such Registration Statement, amendment and supplement thereto or any Free Writing Prospectus, and the Company shall use its commercially reasonable efforts to comply with such request; provided, however, that the Company shall not have any obligation to so modify any information if the Company reasonably expects that so doing would cause the prospectus to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(c) After the filing of the Registration Statement, the Company shall (i) cause the related prospectus to be supplemented by any required prospectus supplement, and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act, (ii) comply with the provisions of the Securities Act applicable to the Company with respect to the disposition of all Registrable Securities covered by such Registration Statement during the applicable period in accordance with the intended methods of disposition by the Registering Stockholder thereof set forth in such Registration Statement or supplement to such prospectus and (iii) promptly notify each Registering Stockholder holding Registrable Securities covered by such Registration Statement and the Holders' Counsel of any stop order issued or threatened by the SEC or any state securities commission and take all commercially reasonable actions required to prevent the entry of such stop order or to remove it if entered.

(d) The Company shall use its commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by such Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as any Registering Stockholder holding such Registrable Securities reasonably (in light of such Registering Stockholder's intended plan of distribution) requests, and continue such registration or qualification in effect in such jurisdiction for the shortest of (A) as long as permissible pursuant to the laws of such jurisdiction, (B) as long as any such Registering Stockholder requests or (C) until all such Registrable Securities are sold and (ii) cause such Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be reasonably necessary or advisable to enable such Registering Stockholder to consummate the disposition of the Registrable Securities owned by such Registering Stockholder; provided that the Company shall not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 2.04(d), (B) subject itself to taxation in any such jurisdiction or (C) consent to general service of process in any such jurisdiction.

(e) The Company shall promptly notify each Registering Stockholder holding such Registrable Securities covered by such Registration Statement (i) at any time when a prospectus relating thereto is required to be delivered under the Securities Act, upon the discovery that, or upon the occurrence of an event as a result of which, the preparation of a supplement or amendment to such prospectus is required so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and the Company shall promptly (subject to any applicable Suspension Period) prepare and make available to each Registering Stockholder and file with the SEC any such supplement or amendment, (ii) as soon as the Company becomes aware of any request by the SEC or any federal or state governmental authority for amendments or supplements to a Registration Statement or related prospectus covering Registrable Securities or for additional information relating thereto, (iii) as soon as the Company becomes aware of the issuance or threatened issuance by the SEC of any stop order suspending or threatening to suspend the effectiveness of a Registration Statement covering the Registrable Securities or (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose.

(f) (i) The Registering Stockholders holding a majority of the Registrable Securities to be included in a Demand Registration or intended to be sold pursuant to a Public Offering pursuant to a “take down” under a Shelf Registration shall have the right to select an underwriter or underwriters in connection with such Public Offering or “take down” (as the case may be) (which underwriter or underwriters may include any Affiliate of any Registering Stockholder so long as including such Affiliate would not require the separate engagement of a qualified independent underwriter with respect to such offering), subject to the Company’s approval (which shall not be unreasonably withheld, conditioned or delayed) and (ii) the Company shall select an underwriter or underwriters in connection with any other Public Offering. In connection with any Public Offering, the Company shall enter into customary agreements (including an underwriting agreement in customary form) and take all other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities in any such Public Offering, including, if required, the engagement of a “qualified independent underwriter” in connection with the qualification of the underwriting arrangements with FINRA.

(g) Subject to confidentiality arrangements customarily applicable to underwriters and the Registering Stockholders, the Company shall make available for inspection by any Registering Stockholder and any underwriter participating in any disposition pursuant to a Registration Statement being filed by the Company pursuant to this Section 2.04 and any attorney, accountant or other professional retained by any such Stockholder or underwriter (collectively, the “Inspectors”), all financial and other records, pertinent corporate documents and properties of the Company and its Subsidiaries (collectively, the “Records”) as shall be reasonably necessary or desirable to enable them to exercise their due diligence responsibility, and cause the Company’s officers, directors, managers and employees (and those of the Company’s Subsidiaries) to supply all information reasonably requested by any Inspectors in connection with such Registration Statement.

(h) The Company shall furnish to each Registering Stockholder and to each such underwriter, if any, a signed counterpart, addressed to such Registering Stockholder or underwriter, of (i) an opinion or opinions of counsel to the Company and (ii) a comfort letter or comfort letters from the Company’s independent public accountants, each in customary form and covering such matters of the kind customarily covered by opinions or comfort letters, as the case may be, any Registering Stockholder or the lead managing underwriter therefor reasonably requests.

(i) The Company shall otherwise comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably available, an earnings statement or such other document that shall satisfy the provisions of Section 11(a) of the Securities Act and the requirements of Rule 158 thereunder.

(j) The Company may require each Registering Stockholder promptly to furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be reasonably required in connection with such registration.

(k) Each Registering Stockholder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 2.04(e), such Stockholder shall forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement (including any Shelf Registration) covering such Registrable Securities until such Stockholder's receipt of (i) copies of the supplemented or amended prospectus from the Company or (ii) further notice from the Company that distribution can proceed without an amended or supplemented prospectus, and, in the circumstances described in clause (i), if so directed by the Company, such Stockholder shall deliver to the Company all copies, other than any permanent file copies then in such Stockholder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. If the Company shall give such notice, the Company shall extend the period during which such Registration Statement shall be maintained effective (including the period referred to in Section 2.04(a)) by the number of days during the period from and including the date of the giving of notice pursuant to Section 2.04(e) to the date when the Company shall (x) make available to such Stockholder a prospectus supplemented or amended to conform with the requirements of Section 2.04(e) or (y) deliver to such Stockholder the notice described in clause (ii).

(l) The Company shall use its commercially reasonable efforts to list all Registrable Securities of any class or series covered by such Registration Statement on any national securities exchange on which any of the Registrable Securities of such class or series are then listed or traded.

(m) Upon written request (which request shall be given with reasonable advance notice) to the Company by Registering Stockholders holding a majority of the Registrable Securities being sold in such offering, the Company shall have appropriate officers of the Company or its Subsidiaries (i) upon reasonable request and at reasonable times prepare and make presentations at any "road shows" and before analysts and rating agencies, as the case may be, (ii) take other actions to obtain ratings for any Registrable Securities and (iii) otherwise use its commercially reasonable efforts to cooperate as requested by the underwriters in the offering, marketing or selling of the Registrable Securities.

(n) The Company shall, as soon as possible following its actual knowledge thereof, notify each Registering Stockholder: (A) when a prospectus, any prospectus supplement, a Registration Statement or a post-effective amendment to a Registration Statement has been filed with the SEC, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective; (B) of any request by the SEC or any other federal or state governmental authority for amendments or supplements to a Registration Statement, a related prospectus (including a Free Writing Prospectus) or any other additional information; or (C) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceedings for such purpose.

(o) The Company shall reasonably cooperate with each Registering Stockholder and each underwriter participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made by FINRA.

(p) The Company shall take all other steps reasonably necessary to effect the registration of such Registrable Securities and reasonably cooperate with the holders of such Registrable Securities to facilitate the disposition of such Registrable Securities.

(q) The Company shall, within the deadlines specified by the Securities Act, make all required filings of all prospectuses (including any Free Writing Prospectus) with the SEC and make all required filing fee payments in respect of any Registration Statement or related prospectus used under this Agreement (and any offering covered hereby).

(r) The Company shall, if such registration is pursuant to a Registration Statement on Form S-3 or any similar short-form registration, include in such Registration Statement such additional information for marketing purposes as the managing underwriter with respect to an underwritten public offering reasonably requests.

Section 2.05. Indemnification by the Company. The Company agrees to indemnify and hold harmless each Registering Stockholder holding Registrable Securities covered by a Registration Statement, its Affiliates, stockholders, members, directors, officers, managers, employees, partners and agents, and each Person, if any, who controls such Registering Stockholder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, "Stockholder Parties") from and against any and all losses, claims, damages, liabilities and expenses (including reasonable expenses of investigation and reasonable attorneys' fees and expenses) ("Damages") caused by or relating to any untrue statement or allegedly untrue statement of a material fact contained in any Registration Statement or prospectus relating to the Registrable Securities (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any preliminary prospectus or Free Writing Prospectus relating to the Registrable Securities (including any information that has been deemed to be a part of any prospectus under Rule 159 under the Securities Act), or caused by or relating to any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that the Company shall not be liable to any Stockholder Party for any Damages that are caused by or related to any such untrue statement or omission or alleged untrue statement or omission so made based upon information furnished in writing to the Company by or on behalf of such Registering Stockholder expressly for use therein. The Company also agrees to indemnify and hold harmless any underwriters of the Registrable Securities, their respective officers and directors and each Person who controls any underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act on substantially the same basis as that of the indemnification of the Registering Stockholders provided in this Section 2.05.

Section 2.06. Indemnification by Registering Stockholders. Each Registering Stockholder holding Registrable Securities included in any Registration Statement agrees, severally but not jointly, to indemnify and hold harmless (i) the Company, (ii) each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, (iii) each other Registering Stockholder participating in any offering of Registrable Securities and (iv) the respective Affiliates, stockholders, members, directors, officers, managers, employees, partners and agents of each of the Persons specified in clauses (i) through (iii) from and against all Damages to the same extent as the foregoing indemnity from the Company to such Registering Stockholder, but only with respect to information furnished in writing by or on behalf of such Registering Stockholder expressly for use in any Registration Statement or prospectus relating to the Registrable Securities, or any amendment or supplement thereto, or any preliminary prospectus or Free Writing Prospectus relating to the Registrable Securities (including any information that has been deemed to be a part of any prospectus under Rule 159 under the Securities Act). Each Registering Stockholder also agrees to indemnify and hold harmless any underwriters of the Registrable Securities, their respective officers and directors and each Person who controls any underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the

Exchange Act on substantially the same basis as that of the indemnification of the Company and the other Registering Stockholders provided in this Section 2.06. As a condition to including Registrable Securities in any Registration Statement filed in accordance with Article II, the Company may require that it shall have received an undertaking reasonably satisfactory to it from any underwriter to indemnify and hold the Company harmless to the extent customarily provided by underwriters with respect to similar securities and offerings. No Registering Stockholder shall be liable under this Section 2.06 for any Damages in excess of the net proceeds (after deducting the underwriters' discounts and commissions) realized by such Registering Stockholder in the sale of Registrable Securities of such Registering Stockholder to which such Damages relate.

Section 2.07. Conduct of Indemnification Proceedings. If any proceeding (including any investigation by any governmental authority) shall be instituted involving any Person in respect of which indemnity may be sought pursuant to Section 2.05 or Section 2.06, such Person (an "Indemnified Party") shall promptly notify the Person against whom such indemnity may be sought (the "Indemnifying Party") in writing and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party, and shall assume the payment of all reasonable fees and expenses in connection therewith; provided that the failure of any Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure to notify. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel; (ii) in the reasonable judgment of such Indemnified Party, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them; or (iii) the Indemnified Party shall have reasonably concluded (based on the advice of counsel) that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Party. It is understood that, in connection with any proceeding or related proceedings in the same jurisdiction, the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for all such Indemnified Parties, and that all such fees and expenses shall be reimbursed promptly after receipt of an invoice setting forth such fees and expenses in reasonable detail. In the case of any such separate firm for any Indemnified Party, such firm shall be designated in writing by the Indemnified Party. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, or if there is a final judgment for the plaintiff, the Indemnifying Party shall indemnify and hold harmless each Indemnified Party from and against any Damages (to the extent obligated herein) by reason of such settlement or judgment. Without the prior written consent of an Indemnified Party, no Indemnifying Party shall effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability arising out of such proceeding.

Section 2.08. Contribution. If the indemnification provided for in Section 2.05 or Section 2.06 is unavailable to an Indemnified Party or insufficient in respect of any Damages caused by or relating to any untrue statement or allegedly untrue statement of a material fact contained in any Registration Statement or prospectus relating to the Registrable Securities (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any preliminary prospectus or Free Writing Prospectus relating to the Registrable Securities (including any information that has been deemed to be a part of any prospectus under Rule 159 under the Securities Act), or caused by or relating to any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified

Party as a result of such Damages in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the Indemnified Party in connection with such actions which resulted in such Damages, as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and the Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact has been made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action.

The parties agree that it would not be just and equitable if contribution pursuant to this Section 2.08 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by a party as a result of the Damages referred to in the preceding paragraph shall be deemed to include, subject to the limitations set forth in Section 2.05 and Section 2.06, any legal or other expenses reasonably incurred by a party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 2.08, no Registering Stockholder shall be required to contribute any amount in excess of the net proceeds (after deducting the underwriters' discounts and commissions) received by such Registering Stockholder in the applicable offering. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act), and no Person under the control, within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, of a Person guilty of such fraudulent misrepresentation, shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Each Registering Stockholder's obligation to contribute pursuant to this Section 2.08 is several in the proportion that the net proceeds of the applicable offering received by such Registering Stockholder bears to the net total proceeds of the applicable offering received by all such Registering Stockholders and not joint.

Section 2.09. Participation in Public Offering. No Stockholder may participate in any Public Offering hereunder unless such Stockholder (i) agrees to sell such Stockholder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements and the provisions of this Agreement in respect of registration rights.

Section 2.10. Other Indemnification. Indemnification similar to that specified herein (with appropriate modifications) shall be given by the Company and each Registering Stockholder participating therein with respect to any required registration or other qualification of securities under any federal or state law or regulation or governmental authority other than the Securities Act.

Section 2.11. Cooperation by the Company. At any time following the Initial Public Offering, if any Stockholder shall transfer, assign, sell, convey or otherwise dispose of any Registrable Securities pursuant to Rule 144, the Company shall reasonably cooperate with such Stockholder, provide to such Stockholder such information as such Stockholder shall reasonably request and make publicly available information necessary to permit sales pursuant to Rule 144 for so long as necessary.

Section 2.12. Transfer of Registration Rights. The rights of a Stockholder under this Article II may be transferred or assigned in connection with a transfer of BellRing LLC Units or Registrable Securities, provided that all of the following additional conditions are satisfied: (x) such transfer or assignment is effected in accordance with applicable securities laws, (y) such transfer is effected in accordance with the Certificate of Incorporation and the BellRing LLC Agreement, as applicable, and (z) such transferee or assignee executes and delivers to the Company an agreement to be bound by this Agreement in the form of Exhibit A.

Section 2.13. Limitations on Subsequent Registration Rights. The Company agrees that it shall not enter into any agreement with any holder or prospective holder of any securities of the Company (i) that would allow such holder or prospective holder to include such securities in any Demand Registration, Piggyback Registration or Shelf Registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that their inclusion would not be on terms more favorable in the aggregate to such holder or prospective holder than this Agreement. The Company also represents and warrants to each Stockholder that it has not prior to the date of this Agreement entered into any agreement with respect to any of its securities granting any registration rights to any Person.

Section 2.14. Free Writing Prospectuses. Except for a prospectus relating to Registrable Securities included in a Registration Statement, an “Issuer Free Writing Prospectus” (as defined in Rule 433 under the Securities Act) or other materials prepared by or on behalf of the Company, each Registering Stockholder represents and agrees that it (i) shall not make any offer relating to the Registrable Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a Free Writing Prospectus, and (ii) has not distributed and will not distribute any written materials in connection with the offer or sale pursuant to a Registration Statement of Registrable Securities without the prior written consent of the Company and, in connection with any Public Offering, the underwriters.

Section 2.15. Information from Registering Stockholders; Obligations of Registering Stockholders.

(a) It shall be a condition precedent to the obligations of the Company to include the Registrable Securities of any Registering Stockholder that has requested inclusion of its Registrable Securities in any Registration Statement or related prospectus, as the case may be, that such Registering Stockholder shall take the actions described in this Section 2.15.

(b) Each Registering Stockholder that has requested inclusion of its Registrable Securities in any Registration Statement shall (i) furnish to the Company (as a condition precedent to such Registering Stockholder’s participation in such registration) in writing such information with respect to such Registering Stockholder, its ownership of Company Securities and the intended method of disposition of its Registrable Securities as the Company may reasonably request or as may be required by law or regulations for use in connection with any related Registration Statement or prospectus (or amendment or supplement thereto) and all information required to be disclosed in order to make the information previously furnished to the Company by such Registering Stockholder not contain a material misstatement of fact or necessary to cause such Registration Statement or prospectus (or amendment or supplement thereto) not to omit a material fact with respect to such Registering Stockholder necessary in order to make the statements therein not misleading and (ii) comply with the Securities Act and the Exchange Act and all applicable state securities laws and comply with all applicable regulations in connection with the registration and the disposition of Registrable Securities.

(c) Each Registering Stockholder shall promptly (i) following its actual knowledge thereof, notify the Company of the occurrence of any event that makes any statement made in a Registration Statement, prospectus, Issuer Free Writing Prospectus or other Free Writing Prospectus regarding such Registering Stockholder untrue in any material respect or that requires the making of any changes in a Registration Statement, prospectus, Issuer Free Writing Prospectus or other Free Writing Prospectus so that, in such regard, it shall not contain any untrue statement of a material fact or omit any material fact required to be stated therein or necessary to make the statements not misleading and (ii) provide the Company with such information as may be required to enable the Company to prepare a supplement or post-effective amendment to any such Registration Statement or a supplement to such prospectus or Free Writing Prospectus.

(d) Each Registering Stockholder shall use commercially reasonable efforts to cooperate with the Company in preparing the applicable Registration Statement.

(e) Each Stockholder agrees that no Stockholder shall be entitled to sell any Registrable Securities pursuant to a Registration Statement or to receive a prospectus relating thereto unless such Stockholder has furnished the Company with all information required to be included in such Registration Statement by applicable securities laws in connection with the disposition of such Registrable Securities as reasonably requested by the Company.

(f) Notwithstanding anything to the contrary herein, no Registering Stockholder shall be required to make any representations or warranties to or agreements with the Company, the underwriters of any underwritten Public Offering, or any other Person in connection with a disposition of Registrable Securities other than representations, warranties or agreements regarding such Registering Stockholder, such Registering Stockholder's ownership of Registrable Securities and such Registering Stockholder's intended method of distribution of Registrable Securities.

ARTICLE III. BOARD OF DIRECTORS

Section 3.01. Board of Directors.

(a) Board Size and Structure. The Board may increase or decrease the number of Directors, subject to the rights of Post under this Agreement and Applicable Governance Rules, in accordance with the Certificate of Incorporation and Bylaws. Upon consummation of the Initial Public Offering, the Board shall consist of five directors, and of such five directors:

(i) the number of Post Nominees shall be three;

(ii) the directors serving as Post Nominees shall be Darcy Horn Davenport, Thomas P. Erickson and Robert V. Vitale;

(iii) the terms of office of the initial Post Nominees shall be as follows:

(A) Darcy Horn Davenport shall serve for a term expiring at the Company's annual meeting of stockholders in 2020;

(B) Thomas P. Erickson shall serve for a term expiring at the Company's annual meeting of stockholders in 2021; and

(C) Robert V. Vitale shall serve for a term expiring at the Company's annual meeting of stockholders in 2022; and

(iv) at least three directors shall be independent directors permitted by SEC rules to serve on the Company's audit committee (such persons, the "Audit Committee Independent Directors"), at least one of whom shall be an audit committee financial expert as defined under Item 407(d)(5)(ii) of SEC Regulation S-K.

(b) Post Nominees.

(i) For so long as the Company has a classified Board, each of the Post Nominees shall be assigned to a class of directors of the Company such that the number of Post Nominees in each class shall be as nearly equal in number as is reasonably possible.

(ii) Anything in the Bylaws to the contrary notwithstanding, with respect to any Post Nominees to be elected at any meeting of stockholders to be held after the date of the Initial Public Offering, Post shall designate the Post Nominees to be elected at such meeting by delivering to the Company written notice designating the Post Nominees to be elected at such meeting and setting forth such Post Nominees' business address, telephone number and e-mail address, (A) in the case of an annual meeting, (1) within 10 days following its receipt of written notice from the Company notifying Post of the date of the first annual meeting after the date of the Initial Public Offering, in the case of the first annual meeting after the date of the Initial Public Offering, and (2) at least 120 days prior to the one year anniversary of the preceding annual meeting, in the case of subsequent annual meetings, and (B) in the case of a special meeting where directors will be elected, within 10 days following the date that Post receives written notice from the Company notifying Post of the special meeting; provided, that if Post shall fail to deliver such written notice, Post shall be deemed to have nominated the Post Nominees most recently designated for the applicable class of directors pursuant to this Section 3.01 if such Post Nominees are serving as directors of the Company at the time Post's notice designating the Post Nominees is due.

(iii) Notwithstanding the foregoing, and subject to Section 6 of the Certificate of Incorporation, (A) if the Board or the Company determines to elect directors by written consent and not at a meeting of stockholders, including election by a consent in lieu of a meeting of stockholders as provided under Section 211(b) of the Delaware General Corporation Law, the Company shall so notify Post in writing (the "Consent Notice"), and Post shall designate the Post Nominees to be so elected by written consent, if any, by delivering to the Company written notice designating the Post Nominees, and setting forth such Post Nominees' business address, telephone number and e-mail address, by the date that is 10 days following its receipt of the Consent Notice; provided, that if Post shall fail to timely deliver such written notice, Post shall be deemed to have nominated the Post Nominees most recently designated for the applicable class of directors pursuant to this Section 3.01 if such Post Nominees are serving as directors of the Company at the time Post's notice designating the Post Nominees is due and (B) if Post determines to elect directors by written consent without action on the part of the Company or the Board, Post may effect by written consent the election of such Post Nominees and other directors as it deems necessary, appropriate or advisable, each director to serve for a term of office as provided in the Certificate of Incorporation and Bylaws of the Company.

(iv) The Company hereby agrees that (A) at each annual or special meeting of stockholders of the Company at which directors are to be elected and (B) in connection with any election of directors by written consent, in each case subject to any rights of the holders of shares of any class or series of preferred stock of the Company, the Company shall follow its applicable corporate governance policies and procedures to cause the Post Nominees to be nominated for election to the Board as nominees of the Company and the Board and otherwise shall ensure that the directors required to be nominated pursuant to this Article III shall be nominated for election and shall use its reasonable best efforts to cause the Post Nominees to be elected to the Board.

(v) For avoidance of doubt, the notice and other requirements set forth in Sections 1(d) through 1(h) of Article II of the Bylaws shall not apply to Post or any Post Nominee.

(c) Committees. The Board shall have a corporate governance committee and compensation committee, an audit committee and such other committees as the Board may determine (collectively, the "Committees"). Subject to Section 3.02:

(i) the audit committee shall consist of at least three Audit Committee Independent Directors under Rule 10A-3 under the Exchange Act and the NYSE Listed Company Manual, and Post shall have the right to designate from the members of the Board the members of the Audit Committee subject to Section 3.02(b); and

(ii) each other Committee shall consist of at least three directors, and Post shall have the right to designate from the members of the Board the members of each such Committee subject to Section 3.02(b);

provided, however, that: (i) the membership of each Committee shall meet the requirements of Applicable Governance Rules, and (ii) subject to clause (i), each Committee shall have such number of directors as the Board may determine, which determination shall be made on the recommendation of the corporate governance and compensation committee. Each Committee shall have such powers and responsibilities as the Board may from time to time authorize.

(d) Removal and Replacement of Post Nominees. If a vacancy is created on the Board or a Committee as a result of the death, disability, retirement, resignation or removal of any Post Nominee, then Post shall have the right to designate such person's replacement, and the person so designated shall be deemed to be a Post Nominee. If such vacancy shall be filled by the Board, the Company shall follow its applicable corporate governance policies and procedures to cause any such Post Nominee to be appointed to the Board. If such vacancy shall be filled at a meeting of stockholders or, subject to Section 6 of the Certificate of Incorporation, through written consents authorized or solicited by the Company, the Company shall follow its applicable corporate governance policies and procedures to cause the Post Nominees to be nominated for election to the Board as nominees of the Company and the Board and otherwise shall ensure that the directors required to be nominated pursuant to this Article III shall be nominated for election and shall use its reasonable best efforts to cause such Post Nominees to be elected to the Board. Subject to Section 6 of the Certificate of Incorporation, Post may fill the vacancy by written consent, and the person so elected by such written consent shall be deemed to be a Post Nominee. No Post Nominee shall be required to resign or be removed from the Board or any Committee as a result of a decrease in the size of the Board or any Committee, except as required by Applicable Governance Rules.

Section 3.02. Reduction of Post's Board and Committee Rights.

(a) Board Nominees. Notwithstanding anything to the contrary in this Agreement, after the Initial Public Offering, the number of Post Nominees that may be designated by Post pursuant to Section 3.01(a)(i) shall be determined based on the percentage of the votes that may be cast by the Post Stockholders under the Certificate of Incorporation on their own behalf without instructions or directions from Persons other than the Company or any of its Subsidiaries or the Post Stockholders, so that the Post Nominees constitute:

(i) a majority of the directors on the Board (and if the number of directors on the Board is even, one director more than 50% of the number of directors on the Board), if the votes that may be cast by the Post Stockholders on their own behalf are greater than 50% of the total voting power of all of the outstanding Shares of the Company;

(ii) one less than a majority of the directors on the Board (and if the number of directors on the Board is even, 50% of the number of directors on the Board), if the votes that may be cast by the Post Stockholders on their own behalf are greater than 25% but 50% or less of the total voting power of all of the outstanding Shares of the Company;

(iii) one-third of the directors on the Board (rounded down to the nearest whole number), if the votes that may be cast by the Post Stockholders on their own behalf are greater than 10% but 25% or less of the total voting power of all of the outstanding Shares of the Company; and

(iv) no directors if the votes that may be cast by the Post Stockholders on their own behalf are 10% or less of the total voting power of all of the outstanding Shares of the Company.

Post shall cause the appropriate number of Post Nominees to resign as required to comply with this Section 3.02 upon the earlier to occur of (i) the date on which the current term of the resigning Post Nominee ends, and (ii) 12 months from the occurrence of an event resulting in the votes that may be cast by the Post Stockholders crossing a threshold described in Section 3.02(a)(i) through (iv). To the extent deemed reasonably necessary by the Board to comply with Applicable Governance Rules (including with respect to composition of committees), Post shall designate Independent Directors as Post Nominees; provided that directors who are affiliated with a Post Party shall not be automatically deemed not to be Independent Directors.

(b) Committees. Notwithstanding anything to the contrary in this Agreement, if the votes that may be cast by the Post Stockholders on their own behalf are less than 25% of the total voting power of all of the outstanding Shares of the Company, Post shall cease to have the rights to designate members of Committees pursuant to Section 3.01(c).

ARTICLE IV. TERMINATION

Section 4.01. Termination. This Agreement shall terminate when the votes that may be cast by the Post Stockholders on their own behalf are less than 2.5% of the total voting power of all of the outstanding Shares; provided, however, that any Stockholder that ceases to own beneficially any Registrable Securities or BellRing LLC Units shall cease to be bound by the terms hereof other than (i) Section 2.05, Section 2.06, Section 2.07, Section 2.08 and Section 2.10 applicable to such Stockholder with respect to any offering of Registrable Securities completed before the date such Stockholder ceased to own any Registrable Securities or BellRing LLC Units and (ii) Section 5.01, Section 5.02 and Section 5.04 through Section 5.11.

ARTICLE V. MISCELLANEOUS

Section 5.01. Successors and Assigns.

(a) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, legal representatives and permitted assigns.

(b) Subject to Section 2.12, neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any party.

(c) Nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties hereto, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 5.02. Notices. All notices, requests and other communications to any party hereunder shall be in writing (including electronic transmission) and shall be given,

if to the Company, to:

BellRing Brands, Inc.
Attn: President and CEO
2503 S. Hanley Rd.
St. Louis, MO 63144
E-mail:

if to Post, to:

Post Holdings, Inc.
2305 S. Hanley Rd.
St. Louis, MO 63144
Attention: General Counsel
Email:

if to any other party hereto, to the address (including electronic transmission) specified on the joinder to this Agreement signed by such party hereto,

or such other address as such party may hereafter specify for the purpose by notice to the other parties hereto. All notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt. Any Person that becomes a Stockholder shall provide its address and e-mail address to the Company, which shall promptly provide such information to each other Stockholder.

Section 5.03. Amendments and Waivers. Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Company and Post. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 5.04. Governing Law. The corporate law of the State of Delaware shall govern all issues and questions concerning the relative rights of the Company and its stockholders pursuant to Article III hereto. All other issues and questions concerning the construction, validity, interpretation and enforcement of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the choice of law or conflicts of law provisions that would indicate the applicability of the laws of any other jurisdiction.

Section 5.05. Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal court located in the State of Delaware or any Delaware state court, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts

therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court.

Section 5.06. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 5.07. Specific Enforcement. Each party hereto acknowledges that the remedies at law of the other parties for a breach or threatened breach of this Agreement would be inadequate and, in recognition of this fact, any party to this Agreement, without posting any bond, and in addition to all other remedies that may be available, shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy that may then be available.

Section 5.08. Counterparts; Effectiveness; Third Party Beneficiaries. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each initial party hereto shall have received a counterpart hereof signed by all of the other initial parties hereto. Until and unless each initial party has received a counterpart hereof signed by the other initial parties hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 5.09. Entire Agreement. This Agreement, together with the Exhibit hereto and any documents, instruments and writings that are delivered pursuant hereto, constitutes the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, among the parties hereto with respect to the subject matter of this Agreement.

Section 5.10. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 5.11. Certificate of Incorporation Supersedes. Nothing in this Agreement is intended to conflict with any provision of the Certificate of Incorporation or Bylaws, each in effect on the date hereof and, in the event of any such conflict, the applicable provisions of the Certificate of Incorporation or Bylaws shall supersede the conflicting provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BELLRING BRANDS, INC.

By: /s/ Darcy Horn Davenport

Name: Darcy Horn Davenport

Title: President and Chief Executive Officer

SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT
[BELLRING BRANDS, INC.]

POST HOLDINGS, INC.

By: /s/ Diedre J. Gray

Name: Diedre J. Gray

Title: Executive Vice President, General
Counsel and Chief Administrative Officer,
Secretary

SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT
[POST HOLDINGS, INC.]

JOINDER TO INVESTOR RIGHTS AGREEMENT

This Joinder Agreement (this "Joinder Agreement") is made as of the date written below by the undersigned (the "Joining Party") in accordance with the Investor Rights Agreement dated as of October 21, 2019 (the "Investor Rights Agreement") among BellRing Brands, Inc. and the other parties thereto, as the same may be amended from time to time. Capitalized terms used, but not defined, herein shall have the meanings ascribed to such terms in the Investor Rights Agreement.

The Joining Party hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, the Joining Party shall be deemed to be a party to the Investor Rights Agreement as of the date hereof and shall have all of the rights and obligations of a "Stockholder" thereunder as if it had executed the Investor Rights Agreement. The Joining Party hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Investor Rights Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of the date written below.

Date: _____, _____

[NAME OF JOINING PARTY]

By: _____

Name: _____

Title: _____

Address for Notices:

Email Address:

TAX MATTERS AGREEMENT

by and among

Post Holdings, Inc.,

BellRing Brands, Inc.

and

BellRing Brands, LLC

Dated as of October 21, 2019

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TAX MATTERS AGREEMENT

THIS TAX MATTERS AGREEMENT (this "Agreement"), dated as of October 21, 2019 (the "Closing Date") is entered into by and among Post Holdings, Inc., a Missouri corporation ("Post"), BellRing Brands, Inc., a Delaware corporation ("BellRing Inc."), and BellRing Brands, LLC, a Delaware limited liability company ("BellRing LLC" and, together with Post and BellRing Inc., the "Parties").

RECITALS

WHEREAS, pursuant to the terms of the Master Transaction Agreement (the "Master Transaction Agreement"), dated as of October 7, 2019 by and among Post, BellRing Inc. and BellRing LLC, the parties thereto have agreed to consummate the separation of BellRing LLC and its business from Post as contemplated thereby, and to take the other actions contemplated in such Master Transaction Agreement (collectively, the "Formation Transactions");

WHEREAS, pursuant to the Formation Transactions, assets of Post and its applicable Subsidiaries shall be transferred to, and liabilities assumed by, BellRing LLC and its applicable Subsidiaries, and the Parties intend for such transfer to be treated for U.S. federal Income Tax purposes as a tax-free contribution of such assets to BellRing LLC by Post and its applicable Subsidiaries under Section 721 of the Code;

WHEREAS, following the Formation Transactions, Post and BellRing Inc. will own the common units in BellRing LLC; and

WHEREAS, the Parties wish to allocate the burden for Income Taxes (as defined below) imposed on Post and the BellRing LLC Entities (as defined below) in respect of their income in a fair and equitable manner.

NOW, THEREFORE, in consideration of these premises, and of the representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

Definitions

Section 1.01 General. As used in this Agreement, the following terms shall have the following meanings.

"Accounting Firm" has the meaning set forth in Section 5.02.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

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

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

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

“BellRing LLC Entity” means BellRing LLC and any other entity that is a member of the BellRing LLC Group.

“BellRing LLC Group” means (a) BellRing LLC and each Person (including any Person treated as a disregarded entity for U.S. federal Income Tax purposes (or for purposes of any state, local, or foreign tax law)) in which BellRing LLC directly or indirectly has an interest, if such Person would be required to join in a Tax Return on a consolidated, combined or unitary basis with BellRing LLC if BellRing LLC or such Person, as applicable, were not required to join in a Tax Return on a consolidated, combined or unitary basis with Post, (b) any corporation (or other Person) that shall have merged or liquidated into any such Person and (c) any predecessor or successor to any Person otherwise described in this definition.

“BellRing LLC Separate Tax Attribute” means Tax Attributes of BellRing LLC or the relevant members of the BellRing LLC Group, in each case, to the extent arising after the Closing Date, treating all such Tax Attributes as being subject to the limitations under applicable Tax law (including limitations on carrybacks and carryforwards) that would apply to the extent that any such members of the BellRing LLC Group would (but for their inclusion in a Post Consolidated Return) be entitled to file a Tax Return on a consolidated, combined or unitary basis solely with other members of the BellRing LLC Group.

“BellRing LLC Taxes” means, in cases when any member of the BellRing LLC Group is included in a Post Consolidated Return, the hypothetical stand-alone Income Tax liability of the BellRing LLC Group or of any members of the BellRing LLC Group (as the case requires), for any taxable period (or portion thereof) beginning after the Closing Date, determined on the following basis: (i) to the extent that members of the BellRing LLC Group would (but for their inclusion in a Post Consolidated Return) be entitled to file a Tax Return on a consolidated, combined or unitary basis solely with other members of the BellRing LLC Group, such Income Tax liability shall be determined as though such members filed on a consolidated, combined or unitary basis, as applicable, solely with such other members of the BellRing LLC Group and (ii) taxable income of the BellRing LLC Group and/or any of its members shall be calculated by taking into account the BellRing LLC Separate Tax Attributes.

“Business Day” means a day, other than Saturday, Sunday, or other day on which commercial banks in New York, New York are authorized or required by applicable law to close.

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

“Closing of the Books Method” means the apportionment of items between portions of a taxable period based on a closing of the books and records on the close of the Closing Date (in the event that the Closing Date is not the last day of the taxable period, as if the Closing Date were the last day of the taxable period), subject to adjustment for items accrued on the Closing Date that are properly allocable to the Post-Closing Period, and subject to adjustment for Tax payments made after the Effective Time, which will be allocated to the Post-Closing Period under the principles of Treasury Regulations Section 1.1502-76; provided that any items not susceptible to such apportionment shall be apportioned on the basis of elapsed days during the relevant portion of the taxable period.

“Code” means the Internal Revenue Code of 1986, as amended.

“Control” (including the terms “controlling” and “controlled”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of such subject Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

“Effective Time” means 11:59 pm on the Closing Date.

“Formation Transactions” has the meaning set forth in the recitals to this Agreement.

“Governmental Authority” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.

“Income Tax Return” means any Tax Return on which Income Taxes are reflected or reported.

“Income Taxes” means any U.S. federal, state, local, or foreign taxes, assessments or similar charges, in whole or in part, based upon, measured by, or calculated with respect to net income or profits, gross income, net worth or gross receipts (including any capital gains Tax, but not including sales, use, real or personal property, transfer, payroll or similar Taxes), and any interest, penalties, or additional amounts related thereto.

“Indemnified Taxes” has the meaning set forth in Section 3.01 of this Agreement.

“LLC Agreement” means that certain Amended and Restated Limited Liability Company Agreement of BellRing LLC, dated as of the date hereof, as such agreement may be further amended, restated, supplemented, and/or otherwise modified from time to time.

“Master Transaction Agreement” has the meaning set forth in the recitals to this Agreement.

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

“Person” or “person” means a natural person, corporation, company, joint venture, individual business trust, trust association, partnership, limited partnership, limited liability company, association, unincorporated organization or other entity, including a Governmental Authority.

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

“Post-Closing Period” means any taxable period (or portion thereof) beginning after the Closing Date, including for the avoidance of doubt, the portion of any Straddle Period beginning after the Closing Date.

“Post Consolidated Return” means any U.S. federal consolidated Income Tax Return required to be filed by Post or a member of the Post Group as the “common parent” of an “affiliated group” (in each case, within the meaning of Section 1504 of the Code), and any consolidated, combined, unitary or similar Income Tax Return required to be filed by Post or any member of the Post Group under a similar or analogous provision of state, local or non-U.S. law.

“Post Group” means (a) Post and each Person (including any Person treated as a disregarded entity for U.S. federal Income Tax purposes (or for purposes of any state, local, or foreign tax law)) required to join in a Tax Return on a consolidated, combined, or unitary basis with Post, (b) any corporation (or other Person) that shall have merged or liquidated into Post or any such Person and (c) any predecessor or successor to any Person otherwise described in this definition, in each of (a), (b) and (c), other than BellRing LLC or any member of the BellRing LLC Group.

“Post Separate Tax Attribute” means Tax Attributes of the Post Group excluding for this purpose the BellRing LLC Group and any members of the BellRing LLC Group (as the case requires), and treating all such Tax Attributes as being subject to the limitations under applicable Tax law (including limitations on carrybacks and carryforwards).

“Post Separate Taxes” means the hypothetical stand-alone Income Tax liability of the Post Group excluding for this purpose the BellRing LLC Group and any members of the BellRing LLC Group (as the case requires) for any taxable period (or portion thereof) beginning after the Closing Date, determined under similar principles as used for the calculation of BellRing LLC Taxes.

“Pre-Closing Period” means any taxable period (or portion thereof) ending on or before the Closing Date, including for the avoidance of doubt, the portion of any Straddle Period ending on the Closing Date.

“Straddle Period” means any taxable period that begins on or before and ends after the Closing Date.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership, or (b) otherwise has the power to vote, either directly or indirectly, sufficient securities to elect a majority of the board of directors or similar governing body.

“Taxes” means any and all U.S. federal, state, local, or foreign taxes, assessments or similar charges, and any interest, penalties, or additional amounts related thereto.

“Tax Attributes” means net operating losses, capital losses, investment tax credit carryovers, section 163(j) carryovers, earnings and profits including those previously taxed, foreign tax credit carryovers, overall foreign losses, previously taxed income, separate limitation losses and any other losses, deductions, credits or other comparable items that could reduce a Tax liability for a past or future taxable period.

“Tax Return” means any return, report, certificate, form, or similar statement or document (including any related or supporting information or schedule attached thereto and any information return, or declaration of estimated Tax) supplied to, or filed with, or required to be supplied to, or filed with, a taxing authority in connection with the payment, determination, assessment or collection of any Tax or the administration of any laws relating to any Tax and any amended Tax return or claim for a refund (or credit in lieu thereof) of Taxes (including any overpayment of Taxes that can be refunded or, alternatively, applied to other Taxes payable), including any interest paid on or with respect to such refund of Taxes.

“Treasury Regulations” means the proposed, final and temporary Income Tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

Section 1.02 Rules of Interpretation. The Parties agree that the Other Definitional and Interpretative Provisions provided in Section 1.02 of the LLC Agreement shall apply equally, *mutatis mutandi*, to this Agreement.

ARTICLE II

Preparation, Filing and Payment of Taxes Shown Due on Tax Returns

Section 2.01 Post Consolidated Returns.

(a) For so long as any BellRing LLC Entity is includible in a Post Consolidated Return, Post shall maintain separate calculations of BellRing LLC Taxes, BellRing LLC Separate Tax Attributes, Post Separate Taxes, and Post Separate Tax Attributes. To the extent BellRing LLC or any BellRing LLC Entity is required to be included in any Post Consolidated Return, Post shall prepare and file (or cause to be prepared and filed) each such Post Consolidated Return, and shall pay, or cause to be paid, to the applicable Governmental Authority all Taxes due in respect of any such Post Consolidated Return. Post may take (or fail to take) any position on or make (or fail to make) any elections or other determinations with respect to any Post Consolidated Return in its sole discretion; provided that Post will act reasonably and in good faith in balancing the competing interests between Post and the BellRing LLC Entities and maximizing the tax positions of the BellRing LLC Entities, on the one hand, and Post, on the other hand, in an equitable fashion.

(b) In the event that any Post Consolidated Return includes a BellRing LLC Entity, the following rules shall apply: (i) BellRing LLC will pay to Post an amount equal to any BellRing LLC Taxes that are actually paid by Post in respect of such return; (ii) if, as a result of the offset of a Tax liability with a Post Separate Tax Attribute, the BellRing LLC Taxes in respect of such return exceed the actual cash liability paid by Post, then BellRing LLC shall be required to pay Post an amount equal to such excess only at such time, and to the extent, that the cash liability for a later Tax period in respect of Post Separate Taxes is greater than it would have been had the Post Separate Tax Attribute not been used to create the excess (for the avoidance of doubt, even if such later Tax period occurs at a time when the applicable BellRing LLC Entity is no longer included in the applicable Post Consolidated Return); (iii) if, as a result of the offset of a Tax liability with a BellRing LLC Separate Tax Attribute, the Post Separate Taxes exceed the actual cash liability paid by Post in respect of the return, then Post shall be required to pay BellRing LLC an amount equal to such excess only at such time, and to the extent, that the cash Tax liability for a later Tax period in respect of BellRing LLC Taxes is greater than it would have been had the BellRing LLC Separate Tax Attribute not been used to create the excess (for the avoidance of doubt, even if such later Tax period occurs at a time when the applicable BellRing LLC Entity is no longer included in the applicable Post Consolidated Return); (iv) subject to clause (v) of this Section 2.01(b) each Party shall make, or cause to be made, any and all payments due under this Section 2.01(b) on or before the later of (x) ten (10) Business Days before the due date of the applicable Taxes (including estimated Tax payments) and (y) ten (10) Business Days after the Party required to make a payment is notified of such requirement (which such notice may be provided prior to the time the applicable Taxes are paid, and such notice may represent a reasonable estimate (provided that the amount of payments shall in all cases be based on the actual Tax liability and not on such reasonable estimate)); and (v) amounts owed between Post and BellRing LLC under clauses (i)-(iii) of this Section 2.01(b) that are due and payable in respect of the same Post Consolidated Return may be netted against each other. In the event that BellRing Inc. is included in a Post Consolidated Return, then to the extent (i) Post is required to pay Income Taxes attributable to BellRing Inc. that are not otherwise addressed in this Section 2.01(b), or (ii) any Post Separate Tax Attributes are used to offset such Income Taxes, then Post and Bellring Inc. shall make payments to each other using the procedures and principles contained in this Article II (without duplication for Income Taxes otherwise addressed in this Section 2.01(b)) as if Bellring Inc. were Bellring LLC.

Section 2.02 Allocation of Taxes. At least ten (10) Business Days prior to the filing of a Post Consolidated Return discussed in Section 2.01 (or, if earlier, on the date that a notice is provided by Post to BellRing LLC in respect of such Post Consolidated Return filing pursuant to Section 2.01), Post shall deliver to BellRing LLC, to be shared with BellRing Inc. at BellRing Inc.'s request, for BellRing LLC's review and comment, Post's calculation of the BellRing LLC Taxes, BellRing LLC Separate Tax Attributes, Post Separate Taxes, Post Separate Tax Attributes, and amounts due under Section 2.01(b), together with supporting documentation, to be included in any such Post Consolidated Return and acting in good faith shall incorporate all reasonable suggestions or comments made by BellRing LLC regarding such calculations, provided that nothing herein shall be interpreted to require the disclosure of (i) the Post Consolidated Return or items on the

Post Consolidated Return that do not relate to the BellRing LLC Entities and Post may provide pro forma separate company Tax Returns or summaries of issues in lieu of any such disclosure, or (ii) anything that is privileged so long as sufficient information and calculations are provided in a form so that BellRing LLC can analyze and dispute any calculations pursuant to this Agreement. In the event of any dispute between Post, BellRing LLC and BellRing Inc. regarding a calculation of the amount of BellRing LLC Taxes, BellRing LLC Separate Tax Attributes, Post Separate Taxes, or Post Separate Tax Attributes, the relevant Parties shall work together in good faith to resolve such disagreement, and to the extent they are unable to do so within ninety (90) days, the dispute shall be resolved by an Accounting Firm in accordance with Section 5.02; provided that during the pendency of any such dispute, the Parties shall be obligated to make the payments as required by Section 2.01(b) consistent with the original determinations by Post and within the timeframe described in Section 2.01(b); provided further, that any payments necessary to reflect the resolution of any such dispute shall be made within ten (10) Business Days following such resolution.

Section 2.03 Tax Treatment of Payments. To the extent permitted by applicable law, all amounts paid pursuant to this Article II shall be treated as reimbursements for expenses, and shall not be treated as distributions by BellRing LLC in respect of its equity or as capital contributions to BellRing LLC.

ARTICLE III

Indemnification for Taxes

Section 3.01 Indemnified Taxes. Post shall pay (or cause to be paid), and shall indemnify and hold the BellRing LLC Entities harmless from and against, without duplication, any losses attributable to or relating to (i) all Taxes of the BellRing LLC Entities that are attributable to a Pre-Closing Period, (ii) all Tax liabilities of another Person imposed on any BellRing LLC Entity arising by law (including transferee or successor liability), equity, contract (for the avoidance of doubt, excluding this Agreement), or otherwise as a result of a transaction that occurred during the Pre-Closing Period, (iii) all Tax liabilities of Post and its Affiliates (other than the BellRing LLC Entities) imposed on any BellRing LLC Entity by a Governmental Authority as a result of being includible on a Post Consolidated Return (whether imposed for a Pre-Closing Period or a Post-Closing Period), but, with respect to any such Tax liabilities imposed for Post-Closing Periods in respect of BellRing LLC Taxes, only to the extent BellRing LLC has made a payment with respect to such Taxes to Post as required by Article II, (iv) any Tax liabilities assessed against a BellRing LLC Entity in its capacity as a withholding agent for a payment made to Post or its Affiliate (other than a BellRing LLC Entity), (v) all Tax liabilities under Section 965 of the Code (whether imposed for a Pre-Closing Period or a Post-Closing Period), and (vi) all Tax liabilities resulting from the Formation Transactions (whether imposed for a Pre-Closing Period or a Post-Closing Period) ((i) through (vi) collectively, "Indemnified Taxes"). To the extent Post cannot pay any such amounts directly to the relevant taxing authorities, Post shall timely pay, or cause to be timely paid, any such amounts to BellRing LLC.

Section 3.02 Refunds of Pre-Closing Taxes. Any Tax refunds that are received by a BellRing LLC Entity shall be for the account of Post to the extent attributable to Indemnified Taxes that were actually paid, or caused to be paid, by Post. The relevant BellRing LLC Entity shall pay over to Post any such refund, net of Taxes and reasonable expenses attributable thereto, paid in cash within ten (10) Business Days after receipt thereof, and to the extent any refunds are applied against a future Tax liability, the relevant BellRing LLC Entity shall pay over to Post the amount of Tax savings at the time the Tax Return in which such savings are realized is required to be filed (taking into account applicable extensions). The relevant BellRing LLC Entities shall cooperate with Post in obtaining any such Tax refunds.

Section 3.03 Apportionment. For purposes of this Article III, any Taxes, refunds or credits attributable to a Straddle Period shall be apportioned between the Pre-Closing Period and the Post-Closing Period using the Closing of the Books Method.

Section 3.04 Tax Treatment of Payments. To the extent permitted by applicable law, all amounts paid pursuant to this Article III shall be treated as reimbursements for expenses, and shall not be treated as distributions by BellRing LLC in respect of its equity or as capital contributions to BellRing LLC.

Section 3.05 Survival. The indemnity obligations described in this Article III shall survive until the expiration of all applicable underlying statutes of limitations governing the applicable Taxes.

ARTICLE IV

Cooperation

Section 4.01 Cooperation for Spin-Off Transaction. As applicable, Post, BellRing Inc. and BellRing LLC shall cooperate and work together in good faith to ensure Post's (or an Affiliate's) ability to effect a spin-off, split-off or similar transaction (however evidenced or structured, including a subsequent merger of such Affiliate and BellRing Inc.) in a tax-free manner.

Section 4.02 Cooperation for Tax Audits. In the event of an audit by a Governmental Authority of Post, BellRing Inc., or a BellRing LLC Entity, the relevant entity shall promptly notify such other Parties of, and keep the other Parties reasonably informed with respect to, the portion of any such audit the outcome of which is reasonably expected to affect such Parties' rights and obligations under this Agreement, and such Parties shall have the right to participate in and to monitor at its own expense (but not to control) any such portion of any such audit; provided that the relevant entity shall not settle or fail to contest any issue that is reasonably expected to materially affect such Parties' rights or obligations under this Agreement without the prior written consent of such Parties, such consent not to be unreasonably withheld, conditioned or delayed.

ARTICLE V

Miscellaneous

Section 5.01 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State.

Section 5.02 Dispute Resolution. In the event of any dispute between the Parties as to any matter covered by Article II or Article III, the parties to such dispute shall appoint a mutually acceptable independent accounting firm (the "Accounting Firm") to resolve such dispute. The Parties acknowledge that any discussions between the Parties in connection with any such dispute are without prejudice communications made in confidence with the intent of attempting to resolve a potentially litigious dispute and are subject to settlement privilege. Each Party shall provide the other Parties with reasonable access to the working papers and other related information relating to any such dispute and any applicable calculations that are related to, or are the subject matter of, such dispute. The Parties shall make their respective submissions to the Accounting Firm within thirty (30) days after selecting such firm pursuant to this Section 5.02. The determination by such Accounting Firm applying the procedures described herein shall be final, binding, and conclusive on the Parties and judgment may be entered thereon in a court of competent jurisdiction pursuant to Section 5.10. In making its determination pursuant to this Section 5.02, the Accounting Firm (A) shall consider only the items that remain in dispute as of the time of such determination; and (B) shall not assign a value outside the range of the values provided by such Parties. The Parties shall use reasonable efforts to cause the Accounting Firm to make its determination within thirty (30) days after the Parties have made their respective submissions to the Accounting Firm. The Accounting Firm shall resolve all disputes in a manner consistent with this Agreement. The Parties shall require the Accounting Firm to render all determinations in writing and to set forth, in reasonable detail, the basis for such determination. The fees and expenses of the Accounting Firm shall be borne by BellRing LLC.

Section 5.03 Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement or any other such instrument. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 5.04 Entire Agreement. This Agreement and other documents to be entered into or executed by the Parties in connection with the Master Transaction Agreement, together with all exhibits and schedules hereto and thereto, constitute the entire agreement among the Parties pertaining to the subject matter of such agreements and supersede all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties.

Section 5.05 Assignment. This Agreement shall not be assigned by any Party (whether by operation of law or otherwise) without the prior written consent of the other Parties, not to be unreasonably withheld, conditioned or delayed. No assignment by any Party (including any assignments described in the parenthetical in the preceding sentence) shall relieve such Party of any of its obligations hereunder. Any attempted assignment in violation of this Section 5.05 shall be null and void. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, express or implied, is intended to confer on any Person other than the Parties or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

Section 5.06 Specific Performance.

(a) The Parties agree that irreparable harm would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that money damages or other legal remedies, even if available, would not be an adequate remedy for any such harm. The Parties agree that (i) each of the Parties shall be entitled to an injunction or injunctions from a court of competent jurisdiction as set forth in Section 5.10 to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, and (ii) the right of specific enforcement is an integral part of the transactions contemplated by this Agreement, and without that right, BellRing Inc., BellRing LLC, and Post would not have entered into this Agreement. Each of the Parties agrees that no Party or any other Person shall be required to obtain, furnish, or post any bond or similar instrument in connection with or as a condition to obtaining any remedy under this Section 5.06(a), and each Party irrevocably waives any right that it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. Each of the Parties also agrees that it will not oppose the granting of an injunction, specific performance, or other equitable relief on the basis that the other Party has an adequate remedy at law or that any such injunction or award of specific performance or other equitable relief is not an appropriate remedy for any reason.

(b) The Parties further agree that by seeking the remedies provided for in this Section 5.06, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement (including monetary damages) for breach of any of the provisions of this Agreement.

Section 5.07 Amendments; Waivers. This Agreement may not be amended except by an instrument in writing signed by each of the Parties. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as otherwise expressly provided in this Agreement, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 5.08 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile transmission or by electronic mail, and a facsimile or electronic copy of this Agreement or of a signature of a Party shall be effective as an original.

Section 5.09 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE.

Section 5.10 Jurisdiction; Service of Process. Each of the Parties irrevocably agrees that any legal action or proceeding brought by any Party with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by another Party or its successors or assigns, shall be brought and determined exclusively in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court. Each of the Parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal

jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the Parties hereby irrevocably waives, and agrees not to assert as a defense, counterclaim or otherwise, in any action or proceeding brought by any Party with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 5.10, (b) any claim that it or its property is exempt or immune from the jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (c) waives, to the fullest extent permitted by law, any claim that (i) such suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper, or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each of the Parties irrevocably agrees that, subject to any available appeal rights, any decision, order, or judgment issued by such above named courts shall be binding and enforceable, and irrevocably agrees to abide by any such decision, order, or judgment. Each of the Parties hereto agrees that service of process upon such Party in any such action or proceeding shall be effective if such process is given as a notice in accordance with Section 5.11. NOTWITHSTANDING THIS Section 5.10, ANY DISPUTE REGARDING A MATTER COVERED BY Section 5.02 SHALL BE RESOLVED IN ACCORDANCE WITH Section 5.02; PROVIDED THAT THE TERMS OF Section 5.02 MAY BE ENFORCED BY EITHER PARTY IN ACCORDANCE WITH THE TERMS OF THIS Section 5.10.

Section 5.11 Notices.

(a) All notices, requests, claims, demands, and other communications hereunder shall be in writing (including email, so long as a receipt of such email is requested and received) and shall be deemed duly given and received (i) on the date of delivery if delivered personally or via email, or (ii) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to BellRing Inc., to:

BellRing Brands, Inc.
2503 S. Hanley Road
St. Louis, Missouri 63144
Attn: General Counsel
Email:

If to BellRing LLC, to:

BellRing Brands, LLC
2503 S. Hanley Road
St. Louis, Missouri 63144
Attn: General Counsel
Email:

If to Post, to:

Post Holdings, Inc.
2503 S. Hanley Road
St. Louis, Missouri 63144
Attn: General Counsel
Email:

with a copy to (which shall not constitute notice):

Post Holdings, Inc.
2503 S. Hanley Road
St. Louis, Missouri 63144
Attn: Randy Ridenhour
Email:

Any Party may change its contact information by giving the other Parties written notice of its new contact information in the manner set forth above.

[The remainder of this page is intentionally left blank.]

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

Post Holdings, Inc.

By: /s/ Diedre J. Gray
Name: Diedre J. Gray
Title: Executive Vice President, General Counsel and
Chief Administrative Officer, Secretary

BellRing Brands, Inc.

By: /s/ Darcy Horn Davenport
Name: Darcy Horn Davenport
Title: President and Chief Executive Officer

BellRing Brands, LLC

By: /s/ Darcy Horn Davenport
Name: Darcy Horn Davenport
Title: President and Chief Executive Officer

[SIGNATURE PAGE TO TAX MATTERS AGREEMENT]

TAX RECEIVABLE AGREEMENT

by and among

BellRing Brands, Inc.

BellRing Brands, LLC

Post Holdings, Inc.

and

**And Future Members of BellRing Brands, LLC
From Time to Time Party Hereto**

Dated as of October 21, 2019

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This TAX RECEIVABLE AGREEMENT (as amended from time to time, this “Agreement”), dated as of October 21, 2019, is hereby entered into by and between BellRing Brands, Inc., a Delaware corporation (the “Corporation”), BellRing Brands, LLC, a Delaware limited liability company (“BellRing LLC”), Post Holdings, Inc., a Missouri corporation (“Post”), and each of the other Members (as defined herein) from time to time Party hereto.

RECITALS

WHEREAS, BellRing LLC is treated as a partnership for U.S. federal income tax purposes;

WHEREAS, Post and the Corporation are the only members of BellRing LLC as of the date hereof (as used herein, “Members” means each of the members of BellRing LLC other than the Corporation);

WHEREAS, Post owns nonvoting common units in BellRing LLC (the “Units”);

WHEREAS, on the date hereof, the Corporation issued shares of its Class A common stock, par value \$0.01 per share (the “Class A Common Stock”), in an initial public offering of its Class A Common Stock (the “IPO”);

WHEREAS, immediately following the consummation of the IPO, the Corporation acquired newly issued Units from BellRing LLC using the net proceeds from the IPO;

WHEREAS, Article IX of the LLC Agreement (as defined herein) provides each Member a redemption right pursuant to which each Member may cause BellRing LLC to redeem all or a portion of its Units from time to time for shares of Class A Common Stock or, at BellRing LLC’s option (as determined by the Board of Managers), cash (a “Redemption”);

WHEREAS, BellRing LLC and each of its Subsidiaries (as defined herein) that is treated as a partnership for U.S. federal income tax purposes will have in effect an election under Section 754 of the Code (as defined herein) for the Taxable Year (as defined herein) in which any Basis Transaction (as defined herein) occurs, which election will cause certain Basis Transactions to result in an adjustment to the Corporation’s share of the tax basis of the assets owned by BellRing LLC or certain of its Subsidiaries; and

WHEREAS, the Parties to this Agreement desire to provide for certain payments and make certain arrangements with respect to any tax benefits to be derived by the Corporation as the result of Basis Transactions, disproportionate allocations of tax benefits to the Corporation under Section 704(c) of the Code resulting from the Contribution, and the making of payments under this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

“Actual Tax Liability” means, with respect to any Taxable Year, the sum of (i) the actual liability for Covered Taxes of the Corporation (a) appearing on the U.S. federal income Tax Return of the Corporation for such Taxable Year and (b) if applicable, determined in accordance with a Determination (including interest imposed in respect thereof under applicable law) and (ii) the product of (a) federal taxable income (not below zero) reported on the U.S. federal income Tax Return of the Corporation for such Taxable Year and (b) the Deemed Effective State Tax Rate.

“Advisory Firm” means any law or accounting firm that is (A) nationally recognized as being an expert in tax matters and (B) agreed to by the Corporation and the Members.

“Advisory Firm Report” shall mean (a) an attestation report from the Advisory Firm expressing an opinion on management’s assertion as to whether the Tax Benefit Schedule and/or the Early Termination Schedule has been prepared, in all material respects, in accordance with this Agreement, or (b) another type of report or letter from the Advisory Firm related to whether the information in the Tax Benefit Schedule and/or the Early Termination Schedule has been prepared in a manner consistent with the terms of this Agreement.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“Agreed Rate” means LIBOR plus 100 basis points.

“Agreement” is defined in the preamble of this Agreement.

“Amended Schedule” is defined in Section 2.04(b) of this Agreement.

“Attributable” is defined in Section 3.01(b)(i) of this Agreement.

“Bankruptcy Code” means Title 11 of the United States Code.

“Basis Adjustment” means the increase or decrease to, or the Corporation’s share of, the tax basis of the Reference Assets under Section 732, 734(b), 743(b), 754, 755, or 1012 of the Code (or in each case, any similar provisions of state, local or foreign tax law) as a result of any Basis Transaction or payment made under this Agreement. As relevant, Basis Adjustments are to be calculated pursuant to Treasury Regulations Section 1.743-1. Notwithstanding any other provision of this Agreement, the amount of any Basis Adjustment resulting from a Basis Transaction is to be determined without regard to any Pre-Redemption Transaction and as if any Pre-Redemption Transaction had not occurred.

“Basis Schedule” is defined in Section 2.02 of this Agreement.

“Basis Transaction” means any (i) Redemption, (ii) transaction characterized under Section 707(a)(2)(B) of the Code as a sale by a Member of Units or Reference Assets, (iii) distribution (including a deemed distribution) by a member of the BellRing LLC Group to a Member or another member of the BellRing LLC Group that results in a basis adjustment to a Reference Asset under Section 734(b) or 732 of the Code, or (iv) Reorganization.

“Basis Transaction Date” means the date of any Basis Transaction.

“BellRing LLC” is defined in the preamble of this Agreement.

“BellRing LLC Group” means BellRing LLC, each of its direct or indirect Subsidiaries, and each of their predecessors, successors and assigns.

“Board” means the board of directors of the Corporation.

“Board of Managers” means the board of managers of BellRing LLC.

“Business Day” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by applicable law to close.

“Change of Control” means any of the following:

(i) the consummation of a reorganization, merger, share exchange or consolidation (a “Business Combination”) in which (x) the Corporation is a constituent party or (y) a Subsidiary of the Corporation is a constituent party, except any such Business Combination involving the Corporation or a Subsidiary of the Corporation in which the holders of shares of capital stock of the Corporation outstanding immediately prior to such Business Combination continue to hold, or whose shares of capital stock of the Corporation are converted into or exchanged for shares of capital stock that represent, immediately following such Business Combination, more than 50% of the combined voting power of the capital stock entitled to vote generally in the election of directors or other governing body, as the case may be, of (A) the surviving or resulting corporation or other entity or (B) if the surviving or resulting corporation or other entity is a wholly-owned subsidiary of another corporation or other entity immediately following such merger or consolidation, the parent corporation or other entity of such surviving or resulting corporation or other entity;

(ii) a sale, assignment, conveyance, transfer, lease or other disposition, in one transaction or a series of transactions, by the Corporation or any Subsidiary of the Corporation of all or substantially all of the assets of the Corporation and its Subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more Subsidiaries of the Corporation if substantially all of the assets of the Corporation and its Subsidiaries taken as a whole are held by such Subsidiary or Subsidiaries, except where such sale, assignment, conveyance, transfer, lease or other disposition is to a wholly-owned Subsidiary of the Corporation;

(iii) any Person or group of Persons acting together which would constitute a “group” for purposes of Section 13(d) or 14(d) of the Securities and Exchange Act of 1934, as amended, or any successor provisions thereto, other than Post or any Affiliate thereof (other than the Corporation or any of its Subsidiaries), acquiring, holding or otherwise controlling more than 50% of the combined voting power of the capital stock of the Corporation entitled to vote generally in the election of directors (including, for avoidance of doubt, acquiring, holding or otherwise controlling the right to cast all or a portion of the votes to which the Class B Common Stock is entitled pursuant to proxies, voting agreements or other voting arrangements from or with Post or any of its Affiliates (other than the Corporation or any of its Subsidiaries) in accordance with the LLC Agreement); or

(iv) the approval by the stockholders of the Corporation of any plan or proposal for the liquidation or dissolution of the Corporation.

Notwithstanding the foregoing, a “Change of Control” shall not be deemed to have occurred by virtue of (a) any indirect Change of Control of the Corporation resulting from a change of control of Post, (b) the consummation of any transaction or series of integrated transactions immediately following which the record holders of the Class A Common Stock and the Class B Common Stock immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporation immediately following such transaction or series of transactions, (c) the consummation of any transaction or series of integrated transactions in which a Member or an Affiliate of such Member merges with the Corporation or (d) the distribution by Post of its retained beneficial interest in BellRing LLC by means of a spin-off or split-off to its shareholders (however evidenced or structured).

“Class A Common Stock” is defined in the recitals of this Agreement.

“Class B Common Stock” means the Class B common stock, par value \$0.01 per share, of the Corporation.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contribution” means the initial deemed contribution for U.S. federal income tax purposes by Post to BellRing LLC of all of the assets and liabilities of BellRing LLC as part of the formation of BellRing LLC, which occurs in connection with the Reorganization.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Corporation” is defined in the preamble of this Agreement.

“Corporation Return” means the U.S. federal income Tax Return of the Corporation filed with respect to any Taxable Year.

“Covered Taxes” means any U.S. federal, state, local, or franchise taxes, assessments or similar charges that are based on or measured with respect to net income or profits, whether as an exclusive or an alternative basis, and any interest imposed in respect thereof under applicable law.

“Cumulative Net Realized Tax Benefit” is defined in Section 3.01(b)(iii) of this Agreement.

“Deemed Effective State Tax Rate” means an assumed rate equal to 5%.

“Default Rate” means LIBOR plus 500 basis points.

“Default Rate Interest” is defined in Section 3.01(b)(viii) of this Agreement.

“Determination” shall have the meaning ascribed to such term in Section 1313(a) of the Code or any other event (including the execution of a Form 870-AD) that finally and conclusively establishes the amount of any liability for tax.

“Early Complete Termination” is defined in Section 4.01(b) of this Agreement.

“Early Termination Effective Date” means (i) with respect to an early termination pursuant to Section 4.01(b), the date an Early Termination Notice is delivered, (ii) with respect to an early termination pursuant to Section 4.01(c), the date of the applicable Material Breach and (iii) with respect to an early termination pursuant to Section 4.01(d), the date of the applicable Change of Control.

“Early Termination Reference Date” is defined in Section 4.02 of this Agreement.

“Early Termination Event” means (i) an Early Complete Termination to which Section 4.01(b) applies, (ii) a breach of this Agreement to which Section 4.01(c) applies and (iii) a Change of Control to which Section 4.01(d) applies.

“Early Termination Notice” is defined in Section 4.01(b) of this Agreement.

“Early Termination Payment” is defined in Section 4.03(b) of this Agreement.

“Early Termination Rate” means the lesser of (i) 6.5% per annum, compounded annually, and (ii) LIBOR plus 300 basis points.

“Early Termination Schedule” is defined in Section 4.02 of this Agreement.

“Expert” is defined in Section 7.08 of this Agreement.

“Extension Rate Interest” is defined in Section 3.01(b)(vii) of this Agreement.

“Final Payment Date” means any date on which a payment is required to be made pursuant to this Agreement. The Final Payment Date in respect of (i) a Tax Benefit Payment is determined pursuant to Section 3.01(a) of this Agreement and (ii) an Early Termination Payment is determined pursuant to Section 4.03(a) of this Agreement.

“Hypothetical Federal Tax Liability” means, with respect to any Taxable Year, the hypothetical liability of the Corporation that would arise in respect of U.S. federal Covered Taxes, using the same methods, elections, conventions and similar practices used on the actual relevant U.S. federal Tax Returns of the Corporation but (i) calculating depreciation, amortization, or other similar deductions, or otherwise calculating any items of income, gain, or loss, using the Corporation’s proportionate share of such items (without regard to the Section 704(c) Benefits) determined by reference to the Non-Adjusted Tax Basis as reflected on the Basis Schedule, including amendments thereto, for such Taxable Year, (ii) excluding any Section 707(c) Deductions or Imputed Interest for such Taxable Year and (iii) deducting the Hypothetical Other Tax Liability (rather than any amount for state and local tax liabilities) for such Taxable Year. For the avoidance of doubt, the Hypothetical Federal Tax Liability shall be determined without taking into account the carryover or carryback of any tax item (or portions thereof) that is attributable to any of the items described in clauses (i), (ii), or (iii) of the previous sentence.

“Hypothetical Other Tax Liability” means, with respect to any Taxable Year, U.S. federal taxable income determined in connection with calculating the Hypothetical Federal Tax Liability for such Taxable Year (determined without regard to clause (iii) thereof) multiplied by the Deemed Effective State Tax Rate for such Taxable Year.

“Hypothetical Tax Liability” means, with respect to any Taxable Year, the Hypothetical Federal Tax Liability for such Taxable Year, plus the Hypothetical Other Tax Liability for such Taxable Year.

“Imputed Interest” is defined in Section 3.01(b)(vi) of this Agreement.

“Independent Directors” means the members of the Board who are “independent” under the standards of the principal U.S. securities exchange on which the Class A Common Stock is traded or quoted.

“IPO” shall mean the initial public offering of Class A Common Stock pursuant to the Registration Statement.

“Joinder” means a joinder to this Agreement, in form and substance substantially similar to Exhibit A to this Agreement.

“Joinder Requirement” is defined in Section 7.06(a) of this Agreement.

“LIBOR” means for each month (or portion thereof) during any period, an interest rate per annum equal to the rate per annum reported, on the date two (2) days prior to the first day of such month, on the Telerate Page 3750 (or if such screen shall cease to be publicly available, as reported on Reuters Screen page “LIBO” or by any other publicly available source of such market rate) for London interbank offered rates for U.S. dollar deposits for such month (or portion thereof), provided that if (i) adequate and reasonable means do not exist for ascertaining LIBOR and such circumstances are unlikely to be temporary or (ii) the supervisor for the administrator of LIBOR or a governmental authority having jurisdiction over the Members or the Corporation has made a public statement identifying a specific date after which LIBOR shall no longer be used for determining interest rates for loans, then the Corporation and the Members shall designate an alternative rate of interest to LIBOR that gives due consideration to the then prevailing market convention for determining a comparable rate of interest in the United States at such time, and this alternative rate, once designated, shall be deemed to be LIBOR for purposes of this Agreement.

“LLC Agreement” means that certain Amended and Restated Limited Liability Company Agreement of BellRing LLC, dated as of the date hereof, as such agreement may be further amended, restated, supplemented and/or otherwise modified from time to time.

“Market Value” means the Common Unit Redemption Price, as defined in the LLC Agreement.

“Material Breach” is defined in Section 4.01(c) of this Agreement.

“Maximum Rate” is defined in Section 7.12 of this Agreement.

“Members” is defined in the recitals of this Agreement.

“Net Tax Benefit” is defined in Section 3.01(b)(ii) of this Agreement.

“Non-Adjusted Tax Basis” means, with respect to any Reference Asset at any time, the tax basis that such asset would have had at such time if no Basis Adjustments had been made.

“Non-TRA Portion” is defined in Section 2.03(b) of this Agreement.

“Objection Notice” is defined in Section 2.04(a)(i) of this Agreement.

“Parties” means the parties named on the signature pages to this Agreement and each additional party that satisfies the Joinder Requirement, in each case with their respective successors and assigns.

“Person” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

“Pre-Redemption Transaction” means any transfer of one or more Units (including from the exercise of an option to acquire such Units) that occurs after the IPO but prior to a Redemption of such Units and to which Section 743(b) of the Code applies

“Realized Tax Benefit” is defined in Section 3.01(b)(iv) of this Agreement.

“Realized Tax Detriment” is defined in Section 3.01(b)(v) of this Agreement.

“Reconciliation Dispute” is defined in Section 7.08 of this Agreement.

“Reconciliation Procedures” shall mean those procedures set forth in Section 7.08 of this Agreement.

“Redemption” is defined in the recitals to this Agreement.

“Reference Asset” means any asset of any Member of the BellRing LLC Group, whether held directly by BellRing LLC or indirectly by BellRing LLC through a member of the BellRing LLC Group, at the time of, or immediately prior to, a Basis Transaction. A Reference Asset also includes any asset the tax basis of which is determined, in whole or in part, by reference to the tax basis of an asset that is described in the preceding sentence, including “substituted basis property” within the meaning of Section 7701(a)(42) of the Code.

“Registration Statement” means the registration statement on Form S-1 of the Corporation.

“Reorganization” means the transfers or deemed transfers (including Section 721 contributions) of Dymatize Enterprises, LLC units or of assets into Dymatize Enterprises, LLC by its former members and current members of the BellRing LLC Group, which occur in 2019, and that result in new Section 743(b) adjustments to the Dymatize Enterprises, LLC members.

“Schedule” means any Tax Benefit Schedule and any Early Termination Schedule.

“Section 704(c) Benefits” means the disproportionate allocation of tax items of income, gain, deduction and loss to, or away from, the Corporation pursuant to Section 704(c) of the Code in respect of any difference between the fair market value and the tax basis of the Reference Assets immediately following the Reorganization. For the avoidance of doubt, such amount would include disproportionate allocations of tax items of income and gain to a Member and away from the Corporation.

“Section 707(c) Deductions” means the deduction that arises at BellRing LLC in respect of the characterization of certain payments under the Agreement as guaranteed payments for the use of capital under Section 707(c) of the Code by BellRing LLC to Members.

“Senior Obligations” is defined in Section 5.02 of this Agreement.

“Subsidiaries” means, with respect to any Person, as of any date of determination, any other Person as to which such Person owns, directly or indirectly, or otherwise Controls, more than 50% of the voting power or other similar interests or the sole general partner interest or managing member or similar interest of such other Person.

“Tax Benefit Payment” is defined in Section 3.01(b) of this Agreement.

“Tax Benefit Schedule” is defined in Section 2.03(a) of this Agreement.

“Tax Return” means any return, declaration, report or similar statement filed or required to be filed with respect to taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated tax.

“Taxable Year” means a taxable year as defined in Section 441(b) of the Code or comparable section of U.S. state or local tax law (and, therefore, for the avoidance of doubt, may include a period of less than 12 months for which a Tax Return is made) ending on or after the date of the IPO.

“Taxing Authority” shall mean any domestic, foreign, federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any regulatory or other authority with respect to tax matters.

“Termination Objection Notice” is defined in Section 4.02 of this Agreement.

“Transfer” means to, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise.

“TRA Portion” is defined in Section 2.03(b) of this Agreement.

“Treasury Regulations” means the final, temporary and proposed regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period.

“Units” is defined in the recitals of this Agreement.

“Valuation Assumptions” means, as of an Early Termination Effective Date, the assumptions that:

(i) in each Taxable Year ending on or after such Early Termination Effective Date, the Corporation will have taxable income sufficient to use fully the deductions or other tax benefits available to it arising from any tax basis in any Reference Assets, Section 704(c) Benefits, Section 707(c) Deductions and the Imputed Interest during such Taxable Year or future Taxable Years (including, for the avoidance of doubt, any tax basis in any Reference Assets, Section 707(c) Deductions and Imputed Interest that would result from future Tax Benefit Payments that would be paid in accordance with the Valuation Assumptions) in which such deductions would become available;

(ii) the income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other applicable law as in effect on the Early Termination Effective Date, except to the extent any change to such tax rates for such Taxable Year have already been enacted into law;

(iii) all taxable income of the Corporation will be subject to the maximum applicable tax rates for each Covered Tax throughout the relevant period;

(iv) any loss carryovers or carrybacks generated by any tax basis made available to the Corporation in any Reference Assets, Section 704(c) Benefits, Section 707(c) Deductions and Imputed Interest (including any such tax basis in any Reference Assets, Section 707(c) Deductions and Imputed Interest generated as a result of payments made under this Agreement) and available as of the date of the Early Termination Schedule will be used by the Corporation ratably in each Taxable Year from the date of the Early Termination Schedule through the scheduled expiration date of such loss carryovers or, if such carryovers or carrybacks do not have an expiration date, over the fifteen (15)-year period after such carryovers or carrybacks were generated;

(v) any non-amortizable assets will be disposed of for book value on the fifteenth (15th) anniversary of the earlier of (i) the applicable Basis Adjustment and (ii) the Early Termination Effective Date;

(vi) if, on the Early Termination Effective Date, any Member has Units that have not been Redeemed, then such Units shall be deemed to be Redeemed for the Market Value of the shares of Class A Common Stock or the amount of cash that would be received by such Member had such Units actually been Redeemed on the Early Termination Effective Date;

(vii) any future payment obligations pursuant to this Agreement that are used to calculate the Early Termination Payment will be satisfied on the date that any Tax Return to which any such payment obligation relates is required to be filed excluding any extensions; and

(viii) with respect to Taxable Years ending prior to the Early Termination Effective Date, any unpaid Tax Benefit Payments and any applicable Default Rate Interest will be paid.

Section 1.02. Rules of Construction. Unless otherwise specified herein:

(a) The meanings of defined terms are equally applicable to both (i) the singular and plural forms and (ii) the active and passive forms of the defined terms.

(b) For purposes of interpretation of this Agreement:

(i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision thereof.

(ii) References in this Agreement to a Schedule, Article, Section, clause or sub-clause refer to the appropriate Schedule to, or Article, Section, clause or subclause in, this Agreement.

(iii) References in this Agreement to dollars or “\$” refer to the lawful currency of the United States of America.

(iv) The term “including” is by way of example and not limitation.

(v) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(d) Section (and subsection) headings, titles and subtitles herein are included for convenience of reference only and are not to be considered in construing this Agreement.

(e) Unless otherwise expressly provided herein, (i) references to organization documents (including the LLC Agreement), agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto; and (ii) references to any law (including the Code and the Treasury Regulations) shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law.

ARTICLE II DETERMINATION OF REALIZED TAX BENEFIT

Section 2.01. Basis Adjustments; 754 Election.

(a) Basis Adjustments. The Parties acknowledge and agree that, except as otherwise required by applicable law, (i) each Redemption shall be treated as a direct purchase of Units by the Corporation from the applicable Member pursuant to Section 707(a)(2)(B) of the Code (or any similar provisions of applicable state, local or foreign tax law) and (ii) each Basis Transaction will give rise to Basis Adjustments. For the avoidance of doubt, payments made under this Agreement shall not be treated as resulting in a Basis Adjustment to the extent such payments are treated as Imputed Interest or giving rise to Section 707(c) Deductions.

(b) 754 Election. The Corporation shall cause BellRing LLC and each of its Subsidiaries that is treated as a partnership for U.S. federal income tax purposes to have in effect an election under Section 754 of the Code (or any similar provisions of applicable state, local or foreign tax law) for each Taxable Year. The Corporation shall take commercially reasonable efforts to cause each Person in which BellRing LLC owns a direct or indirect equity interest (other than a Subsidiary) that is so treated as a partnership to have in effect any such election for each Taxable Year.

Section 2.02. Basis Schedules. Within one hundred twenty (120) calendar days after the filing of the U.S. federal income Tax Return of the Corporation for each relevant Taxable Year, the Corporation shall prepare, at its own expense, and deliver to the Members a schedule showing, in reasonable detail, (a) the Non-Adjusted Tax Basis of the Reference Assets as of each applicable Basis Transaction Date, (b) the Basis Adjustments to the Reference Assets for such Taxable Year, calculated (i) in the aggregate and (ii) solely with respect to each applicable Member, (c) the periods over which the Reference Assets are amortizable or depreciable and (d) the period over which each Basis Adjustment is amortizable or depreciable (such schedule, a "Basis Schedule"). For the avoidance of doubt, the Basis Schedule shall reflect all changes in the bases of Reference Assets arising other than from a Basis Adjustment (e.g., as the result of an audit). A Basis Schedule will become final and binding on the Parties pursuant to the procedures set forth in Section 2.04(a) and may be amended by the Parties pursuant to the procedures set forth in Section 2.04(b).

Section 2.03. Tax Benefit Schedules.

(a) Tax Benefit Schedule. Within one hundred twenty (120) calendar days after the filing of the Corporation Return for any Taxable Year for which there is a Realized Tax Benefit or Realized Tax Detriment, the Corporation shall provide to the Members a schedule showing, in reasonable detail, (i) the calculation of the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year, (ii) the calculation of any payment to be made to the Members pursuant to Article III with respect to such Taxable Year and (iii) all requested supporting information pursuant to Section 2.04(a) of this Agreement reasonably necessary to support the calculation of such payment (a "Tax Benefit Schedule"). The Tax Benefit Schedule will become final as provided in Section 2.04(a) and may be amended as provided in Section 2.04(b) (subject to the procedures set forth in Section 2.04(a)).

(b) Applicable Principles. Subject to the provisions hereunder, the Realized Tax Benefit or Realized Tax Detriment for each Taxable Year is intended to measure the decrease or increase in the Actual Tax Liability of the Corporation for such Taxable Year attributable to the Basis Adjustments, Section 704(c) Benefits, Section 707(c) Deductions and Imputed Interest, as determined using a "with and without" methodology described in Section 2.04(a). Carryovers or carrybacks of any tax item attributable to any Basis Adjustment, Section 704(c) Benefits, Section 707(c) Deductions or Imputed Interest shall be considered to be subject to the rules of the Code and the Treasury Regulations, and the appropriate provisions of state, local and foreign tax law, governing the use, limitation or expiration of carryovers or carrybacks of the relevant type. If a carryover or carryback of any tax item includes a portion that is attributable to a Basis Adjustment, Section 704(c) Benefits, Section 707(c) Deductions or Imputed Interest (a "TRA Portion") and another portion that is not attributable to a Basis Adjustment, Section 704(c) Benefits, Section 707(c) Deductions or Imputed Interest (a "Non-TRA Portion"), such portions shall be considered to be used in accordance with the "with and without" methodology so that (i) the amount of any Non-TRA Portion is deemed utilized first, followed by the amount of any TRA Portion (with the TRA Portion being applied on a proportionate basis consistent with the provisions of Section 3.03(a)) and (ii) in the case of a carryback of a Non-TRA Portion, such carryback shall not affect the original "with and without" calculation made in the prior Taxable Year. Except with respect to the portion of any payment attributable to Imputed Interest or Section 707(c) Deductions, all Tax Benefit Payments and payments of Default Rate Interest (and including Extension Rate Interest) will be treated as subsequent upward purchase price adjustments that give rise to further Basis Adjustments for the Corporation beginning in the Taxable Year of payment, and as a result, such additional Basis Adjustments will be incorporated into such Taxable Year and into future Taxable Years, as appropriate. Payments in respect of Section 704(c) Benefits shall be treated as additional capital contributions made to BellRing LLC by the Corporation and then paid to the relevant Members as a guaranteed payment for capital, within the meaning of Section 707(c) of the Code, and the resulting Section 707(c) deduction to BellRing LLC shall be specially allocated to the Corporation.

Section 2.04. Procedures, Amendments.

(a) Procedure. Whenever the Corporation delivers to the Members an applicable Schedule under this Agreement, including any Amended Schedule delivered pursuant to Section 2.04(b), Early Termination Schedule or amended Early Termination Schedule, the Corporation shall also (x) deliver to the Members, at their request (and upon reasonable notice), any schedules, valuation reports and work papers providing reasonable detail regarding the preparation of the Schedule or an Advisory Firm Report with respect to such Schedule and (y) allow the Members and their respective advisors reasonable access at no cost to the appropriate representatives of each of the Corporation and/or the Advisory Firm in connection with a review of such Schedule. Without limiting the generality of the preceding sentence, the Corporation shall ensure that any Tax Benefit Schedule that is delivered to the Members, along with any supporting schedules and work papers, provides a reasonably detailed presentation of the calculation of the Actual Tax Liability of the Corporation for the relevant Taxable Year and the Hypothetical Tax Liability of the Corporation for such Taxable Year, and identifies any material assumptions or operating procedures or principles that were used for purposes of such calculations. The applicable Schedule shall become final and binding on all Parties on the thirtieth (30th) calendar day after the Members receive such Schedule, unless:

(i) a Member provides the Corporation with notice prior to such thirtieth (30th) calendar day after receipt of such Schedule of a material objection, made in good faith, to such Schedule ("Objection Notice"); or

(ii) each Member provides a written waiver of its right to deliver an Objection Notice within the time period described in clause (i) above, in which case such Schedule or amendment thereto becomes binding on the date the waiver from all Members is received by the Corporation.

If the Parties, for any reason, are unable to successfully resolve the issues raised in any Objection Notice within thirty (30) calendar days of receipt by the Corporation of such Objection Notice, the Corporation and the Members shall employ the Reconciliation Procedures.

(b) Amended Schedule. The applicable Schedule for any Taxable Year may be amended from time to time by the Corporation (i) in connection with a Determination affecting such Schedule, (ii) to correct material inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was provided to the Members, (iii) to comply with the Expert's determination under the Reconciliation Procedures, (iv) to reflect a material change (relative to the amounts in the original Schedule) in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to an amended Tax Return filed for such Taxable Year, (v) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other Tax item to such Taxable Year; or (vi) to adjust a Basis Schedule to take into account any Tax Benefit Payments made pursuant to this Agreement (such amended Schedule, an "Amended Schedule"). The Corporation shall provide any Amended Schedule to the Members within thirty (30) calendar days of the occurrence of an event referred to in clauses (i) through (vi) of the preceding sentence, and any such Amended Schedule shall be subject to the procedures set forth in Section 2.04(a).

(c) LLC Agreement. This Agreement shall be treated as part of the partnership agreement of BellRing LLC as described in Section 761(c) of the Code and Sections 1.704-1(b)(2)(ii)(h) and 1.761-1(c) of the Treasury Regulations.

ARTICLE III
TAX BENEFIT PAYMENTS

Section 3.01. Payments.

(a) Except as provided in Section 3.02 and Section 3.03, within ten (10) Business Days of a Tax Benefit Schedule with respect to a Taxable Year becoming final in accordance with Section 2.04(a) (such date, the "Final Payment Date" in respect of any Tax Benefit Payment), the Corporation shall pay to each relevant Member the Tax Benefit Payment for such Taxable Year determined pursuant to Section 3.01(b). Each such Tax Benefit Payment shall be made by wire transfer of immediately available funds to a bank account previously designated by the applicable Member to the Corporation or as otherwise agreed by the Corporation and the applicable Member. For the avoidance of doubt, no Tax Benefit Payment shall be made in respect of estimated tax payments, including, without limitation, estimated U.S. federal income tax payments. The Members shall not be required under any circumstances to return any portion of any Tax Benefit Payment, Early Termination Payment or Default Rate Interest previously paid by the Corporation to the Members.

(b) Amount of Payments. A "Tax Benefit Payment" with respect to any Member shall be an amount equal to the sum of the Net Tax Benefit that is Attributable to such Member and the Extension Rate Interest.

(i) Attributable. A Net Tax Benefit is "Attributable" to a Member to the extent that it is derived from (A) any Basis Adjustment or Imputed Interest that is attributable to a Basis Transaction undertaken by or with respect to such Member, (B) any Section 704(c) Benefit to the Corporation to the extent such Section 704(c) Benefit increased the taxable income (or decreased the taxable loss or tax deductions) allocated to such Member, or (C) Section 707(c) Deductions resulting from payments made to such Member.

(ii) Net Tax Benefit. The "Net Tax Benefit" with respect to a Member for a Taxable Year equals the amount of the excess, if any, of (A) 85% of the Cumulative Net Realized Tax Benefit Attributable to such Member as of the end of such Taxable Year over (B) the aggregate amount of all Tax Benefit Payments previously made to such Member under this Section 3.01 (excluding payments attributable to Extension Rate Interest). For the avoidance of doubt, if the Cumulative Net Realized Tax Benefit that is Attributable to a Member as of the end of any Taxable Year is less than the aggregate amount of all Tax Benefit Payments previously made to such Member, such Member shall not be required to return any portion of any Tax Benefit Payment previously made by the Corporation to such Member.

(iii) Cumulative Net Realized Tax Benefit. The "Cumulative Net Realized Tax Benefit" for a Taxable Year equals the cumulative amount of Realized Tax Benefits for all Taxable Years of the Corporation, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriments for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Schedule or Amended Schedule, if any, in existence at the time of such determination.

(iv) Realized Tax Benefit. The “Realized Tax Benefit” for a Taxable Year equals the excess, if any, of the Hypothetical Tax Liability over the Actual Tax Liability for such Taxable Year. If all or a portion of the Actual Tax Liability for such Taxable Year arises as a result of an audit or similar proceeding by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination.

(v) Realized Tax Detriment. The “Realized Tax Detriment” for a Taxable Year equals the excess, if any, of the Actual Tax Liability over the Hypothetical Tax Liability for such Taxable Year. If all or a portion of the Actual Tax Liability for such Taxable Year arises as a result of an audit or similar proceeding by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination.

(vi) Imputed Interest. The principles of Sections 1272, 1274 or 483 of the Code, as applicable, and the principles of any similar provision of U.S. state, local or foreign law, will apply to cause a portion of any Net Tax Benefit payable by the Corporation to a Member under this Agreement to be treated as imputed interest (“Imputed Interest”). For the avoidance of doubt, the deduction for the amount of Imputed Interest as determined with respect to any Net Tax Benefit payable by the Corporation to a Member shall be excluded in determining the Hypothetical Tax Liability of the Corporation for purposes of calculating Realized Tax Benefits and Realized Tax Detriments pursuant to this Agreement.

(vii) Extension Rate Interest. The “Extension Rate Interest” calculated in respect of the Net Tax Benefit (including previously accrued Imputed Interest for a Taxable Year) will equal interest calculated at the Agreed Rate from the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for such Taxable Year until the date on which the Corporation makes a timely Tax Benefit Payment to the Member on or before the Final Payment Date as determined pursuant to Section 3.01(a).

(viii) Default Rate Interest. In the event that the Corporation does not make timely payment of all or any portion of a Tax Benefit Payment to a Member on or before the Final Payment Date as determined pursuant to Section 3.01(a), the amount of “Default Rate Interest” calculated in respect of the Net Tax Benefit (including previously accrued Imputed Interest and the Extension Rate Interest) for a Taxable Year will equal interest calculated at the Default Rate from the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.01(a) until the date on which the Corporation makes such Tax Benefit Payment to such Member. For the avoidance of doubt, the amount of any Default Rate Interest as determined with respect to any Net Tax Benefit payable by the Corporation to a Member shall be included in determining the Hypothetical Tax Liability of the Corporation for purposes of calculating Realized Tax Benefits and Realized Tax Detriments pursuant to this Agreement.

(c) Interest. The provisions of Section 3.01(b) are intended to operate so that interest will effectively accrue for any Taxable Year as follows:

(i) first, at the applicable rate used to determine the amount of Imputed Interest under the Code (from the relevant Basis Transaction Date until the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for such Taxable Year);

(ii) second, at the Agreed Rate in respect of any Extension Rate Interest (from the due date (without extensions) for filing the U.S. federal income Tax Return of the Corporation for such Taxable Year until the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.01(a)); and

(iii) third, at the Default Rate in respect of any Default Rate Interest (from the Final Payment Date for a Tax Benefit Payment as determined pursuant to Section 3.01(a) until the date on which the Corporation makes the relevant Tax Benefit Payment to a Member).

(d) The Parties acknowledge and agree that, as of the date of this Agreement and as of the date of any future Basis Transaction that may be subject to this Agreement, the aggregate value of the Tax Benefit Payments cannot be reasonably ascertained for U.S. federal income or other applicable tax purposes.

Section 3.02. No Duplicative Payments. It is intended that the provisions of this Agreement will not result in duplicative payment of any amount (including interest) required under this Agreement.

Section 3.03. Pro-Ration of Payments as Among the Members.

(a) Insufficient Taxable Income. Notwithstanding anything in Section 3.01(b) to the contrary, if the aggregate potential Covered Tax benefit of the Corporation as calculated with respect to the Basis Adjustments, Section 704(c) Benefits, Section 707(c) Deductions and Imputed Interest (in each case, without regard to the Taxable Year of origination) is limited in a particular Taxable Year because the Corporation does not have sufficient actual taxable income to utilize available deductions fully, then the Covered Tax benefit for the Corporation actually utilized in such Taxable Year shall be allocated among the Members in proportion to the respective Tax Benefit Payment that would have been payable if the Corporation had sufficient taxable income such that there was no limitation.

(b) Late Payments. If for any reason the Corporation is not able to timely and fully satisfy its payment obligations under this Agreement in respect of a particular Taxable Year, then Default Rate Interest will begin to accrue pursuant to Section 5.01 and the Corporation and other Parties agree that (i) the Corporation shall pay the Tax Benefit Payments (and any applicable Default Rate Interest) due in respect of such Taxable Year to each Member pro rata in accordance with the principles of Section 3.03(a) and (ii) no Tax Benefit Payment shall be made in respect of any Taxable Year until all Tax Benefit Payments (and any applicable Default Rate Interest) to all Members in respect of all prior Taxable Years have been made in full.

**ARTICLE IV
TERMINATION**

Section 4.01. Termination, Breach of Agreement, Change of Control.

(a) General. This Agreement shall terminate at the time that there is no potential for any future Tax Benefit Payments to be made to the Members under this Agreement.

(b) Early Complete Termination. With the written approval of a majority of the Independent Directors, the Corporation may elect to terminate this Agreement (an "Early Complete Termination") by (i) delivering to the Members notice of its intention to exercise such right ("Early Termination Notice") and (ii) paying to the Members (1) the Early Termination Payment, (2) any Tax Benefit Payment and Default Rate Interest agreed to by the Corporation and the Members as due and payable but unpaid as of the Early Termination Notice and (3) any Tax Benefit Payment due for the Taxable Year ending prior to, with or including the date of the Early Termination Effective Date (except to the extent that any amounts described in clauses (2) or (3) are included in the Early Termination Payment).

(c) Material Breach. In the event that the Corporation breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment when due (as described below), failure to honor any other material obligation required hereunder or by operation of law as a result of the rejection of this Agreement in a case commenced under the Bankruptcy Code or otherwise ("Material Breach"), then all obligations hereunder shall be accelerated and the Corporation shall pay to the Members (i) the Early Termination Payment, (ii) any Tax Benefit Payment and Default Rate Interest agreed to by the Corporation and the Members as due and payable, but unpaid as of the Early Termination Notice and (iii) any Tax Benefit Payment due for the Taxable Year ending prior to, with or including the date of the Early Termination Effective Date (except to the extent that any amounts described in clauses (ii) or (iii) are included in the Early Termination Payment). Notwithstanding the foregoing, in the event that the Corporation breaches this Agreement and such breach is a Material Breach, the Members shall be entitled to elect to receive the amounts set forth in (i), (ii) and (iii) above or to seek specific performance of the terms hereof. The Parties agree that the failure to make any payment pursuant to this Agreement within three months of the date such payment is due shall be deemed a Material Breach for all purposes of this Agreement, and that it will not be considered to be a Material Breach to make a payment due pursuant to this Agreement within three months of the date such payment is due, provided that the interest provisions of Section 5.01 shall apply to such late payment (unless the Corporation does not have sufficient funds to make such payment as a result of limitations imposed by any Senior Obligations, in which case Section 5.01 shall apply, but the Default Rate shall be replaced by the Agreed Rate), provided further that in the event that payment is not made within three months of the date such payment is due, a Member shall be required to give written notice to the Corporation that the Corporation has breached its material obligations, and so long as such payment is made within ten (10) Business Days of the delivery of such notice to the Corporation, the Corporation shall no longer be deemed to be in Material Breach of its obligations under this Agreement.

(d) Change of Control. In the event of a Change of Control, then all obligations hereunder shall be accelerated and the Corporation shall pay to the Members (i) the Early Termination Payment, (ii) any Tax Benefit Payment and Default Rate Interest agreed to by the Corporation and the Members as due and payable but unpaid as of the Early Termination Notice and (iii) any Tax Benefit Payment due for the Taxable Year ending prior to, with or including the date of the Early Termination Effective Date (except to the extent that any amounts described in clauses (ii) or (iii) are included in the Early Termination Payment).

Section 4.02. Early Termination Schedule. In the event of a Change of Control or a Material Breach, the Corporation shall deliver to the Members, as soon as reasonably practical, and in the case of an Early Complete Termination, contemporaneously with the Early Termination Notice, a Schedule (the "Early Termination Schedule") showing in reasonable detail the information required or requested pursuant to the first sentence of Section 2.03 and the calculation of the Early Termination Payment. The Early Termination Schedule shall become final and binding on all Parties unless a Member, within thirty (30) calendar days after receiving the Early Termination Schedule, provides the Corporation with notice of a material objection to such Schedule made in good faith ("Termination Objection Notice"). If the Parties for any reason are unable to successfully resolve the issues raised in such notice within thirty (30) calendar days after receipt by the Corporation of the Termination Objection Notice, the Corporation and the Members shall employ the Reconciliation Procedures. The date on which such Early Termination Schedule becomes final shall be the "Early Termination Reference Date".

Section 4.03. Payment upon Early Termination.

(a) Timing of Payment. Within ten (10) Business Days after the Early Termination Reference Date (such date, the "Final Payment Date" in respect of any Early Termination Payment), the Corporation shall pay to each relevant Member an amount equal to the Early Termination Payment for such Member and any other payment required to be made pursuant to Section 4.01(b), Section 4.01(c) and Section 4.01(d). Such payment shall be made by wire transfer of immediately available funds to a bank account designated by the applicable Member or as otherwise agreed by the Corporation and the Member.

(b) Amount of Payment. The "Early Termination Payment," as of the Early Termination Effective Date, shall equal with respect to the relevant Member the present value, discounted at the Early Termination Rate as of the applicable Early Termination Reference Date, of all Tax Benefit Payments that would be required to be paid by the Corporation to such Member beginning from the Early Termination Effective Date, applying the Valuation Assumptions. For purposes of calculating the present value pursuant to this Section 4.03(b) of all Tax Benefit Payments that would be required to be paid, it shall be assumed that absent the Early Termination Event all Tax Benefit Payments would be paid on the due date (without extensions) for filing the Corporation Return with respect to Taxes for each Taxable Year. The computation of the Early Termination Payment is subject to the Reconciliation Procedures.

**ARTICLE V
LATE PAYMENTS, ETC.**

Section 5.01. Late Payments by the Corporation. The amount of all or any portion of any Tax Benefit Payment or Early Termination Payment that is required to be made by the Corporation to the Members under this Agreement but is not made by the applicable Final Payment Date shall be payable together with any interest thereon, computed at the Default Rate and commencing from the applicable Final Payment Date.

Section 5.02. Subordination. Notwithstanding any other provision of this Agreement to the contrary, any payment required to be made by the Corporation to the Members under this Agreement shall rank subordinate and junior in right of payment to any principal, interest or other amounts due and payable in respect of any obligations owed in respect of indebtedness for borrowed money of the Corporation ("Senior Obligations") and shall rank *pari passu* in right of payment with all current or future obligations of the Corporation that are not Senior Obligations.

**ARTICLE VI
CONSISTENCY; COOPERATION**

Section 6.01. The Member's Participation in Corporation Tax Matters. Except as otherwise provided herein or in the LLC Agreement, the Corporation shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporation, including without limitation the preparation, filing or amending of any Tax Return and defending, contesting or settling any issue pertaining to Taxes, and certain Tax matters concerning BellRing LLC. Notwithstanding the foregoing, the Corporation shall promptly notify the Members of, and keep the Members reasonably informed with respect to, the portion of any audit of the Corporation or BellRing LLC by a Taxing Authority the outcome of which is reasonably expected to affect any Member's rights and obligations under this Agreement, and any such Member shall have the right to participate in and to monitor at its own expense (but not to control) any such portion of any such audit; provided that the Corporation shall not settle or fail to contest any issue pertaining to Covered Taxes that is reasonably expected to materially affect any Member's rights or obligations under this Agreement without the prior written consent of such Member, such consent not to be unreasonably withheld, conditioned or delayed.

Section 6.02. Consistency. Except upon the written advice of an Advisory Firm and except for items that are explicitly described as "deemed" or treated in a similar manner by the terms of this Agreement, the Corporation and the Members agree to report and cause to be reported for all purposes, including federal, state, local and foreign tax purposes and financial reporting purposes, all tax-related items (including without limitation the Tax Benefit Payment) in a manner consistent with that specified by the Corporation in any Schedule required to be provided by or on behalf of the Corporation under this Agreement and agreed to by the Members. Any dispute concerning such advice shall be subject to the Reconciliation Procedures. In the event the Advisory Firm is

replaced with another firm acceptable to the Corporation and the Members pursuant to the definition of Advisory Firm, such replacement Advisory Firm shall be required to perform its services under this Agreement using procedures and methodologies consistent with those used by the previous Advisory Firm, unless otherwise required by law or the Corporation and the Members agree to the use of other procedures and methodologies.

Section 6.03. Cooperation. Each of the Corporation, BellRing LLC and the Members shall (i) furnish to the other Parties in a timely manner such information, documents and other materials as the other Parties may reasonably request for purposes of making or approving any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any audit, examination or controversy with any Taxing Authority, (ii) make itself available to the other Parties and their respective representatives to provide explanations of documents and materials and such other information as the requesting Parties or their respective representatives may reasonably request in connection with any of the matters described in clause (i) above, and (iii) reasonably cooperate in connection with any such matter, and the requesting Party shall reimburse the other Parties for any reasonable third party costs and expenses incurred pursuant to this Section 6.03.

ARTICLE VII MISCELLANEOUS

Section 7.01. Notices.

(a) All notices, requests, claims, demands and other communications hereunder shall be in writing (including email, so long as a receipt of such email is requested and received) and shall be deemed duly given and received (i) on the date of delivery if delivered personally or via email or (ii) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to the Corporation, to:

BellRing Brands, Inc.
2503 S. Hanley Road
St. Louis, Missouri 63144
Attn: General Counsel
Email:

If to BellRing LLC, to:

BellRing Brands, LLC
2503 S. Hanley Road
St. Louis, Missouri 63144
Attn: General Counsel
Email:

If to Post, to:

Post Holdings, Inc.
2503 S. Hanley Road
St. Louis, Missouri 63144
Attn: General Counsel
Email:

with a copy to (which shall not constitute notice):

Post Holdings, Inc.
2503 S. Hanley Road
St. Louis, Missouri 63144
Attn: Randy Ridenhour
Email:

If to any other Member, to the address and e-mail address specified on such Member's signature page to the applicable Joinder.

Any Party may change its contact information by giving the other Parties written notice of its new contact information in the manner set forth above.

Section 7.02. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 7.03. Entire Agreement; Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and its respective successors and permitted assigns. Other than as provided in the preceding sentence, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.04. Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Delaware.

Section 7.05. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.06. Successors; Assignment; Amendments; Waivers.

(a) Assignment. No Member may assign, sell, pledge or otherwise alienate or transfer any interest in this Agreement, including the right to receive any payment under this Agreement, to any Person without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned or delayed, and without such Person executing and delivering a Joinder agreeing to succeed to the applicable portion of such Member's interest in this Agreement and to become a Party for all purposes of this Agreement (the "Joinder Requirement"); provided, however, that to the extent any Member sells, exchanges, distributes or otherwise transfers Units to any Person (other than the Corporation or BellRing LLC) in accordance with the terms of the LLC Agreement, such Member shall have the option to assign to the transferee of such Units its rights under this Agreement with respect to such transferred Units, so long as such transferee has satisfied the Joinder Requirement. For the avoidance of doubt, if a Member transfers Units in accordance with the terms of the LLC Agreement but does not assign to the transferee of such Units its rights under this Agreement with respect to such transferred Units, such Member shall continue to be entitled to receive the Tax Benefit Payments arising in respect of any subsequent Basis Transactions or Section 704(c) Benefits that are Attributable to the transferred Units. The Corporation may not assign any of its rights or obligations under this Agreement to any Person without approval by the Members (and any purported assignment without such consent shall be null and void). The transferee and transferor of any Transfer permitted under this Section 7.06 shall ensure that the Corporation is provided with a copy (which may be by PDF) of the fully executed instrument of Transfer, which instrument must clearly identify the name of the transferor and transferee and the number of Units being transferred, within five (5) days of the effective date of such Transfer. Any Transfer, or attempted Transfer in violation of this Agreement, including any failure of a purported transferee to enter into a Joinder to this Agreement or to provide any forms or other information to the extent required hereunder, shall be null and void, and shall not bind or be recognized by the Corporation or the Members. The Corporation shall be entitled to treat the record owner of any rights under this Agreement as the absolute owner thereof and shall incur no liability for payments made in good faith to such owner until such time as a written assignment of such rights is permitted pursuant to the terms and conditions of this Section 7.06 and has been recorded on the books of the Corporation.

(b) Amendments. No provision of this Agreement may be amended unless such amendment is approved in writing by the Corporation and the Members, whereupon all Parties shall be bound; provided that amendment of the definition of Change of Control will also require the written approval of a majority of the Independent Directors.

(c) Successors. All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the Parties and their respective successors, assigns, heirs, executors, administrators and legal representatives. The Corporation shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place.

(d) Waiver. No provision of this Agreement may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 7.07. Resolution of Disputes.

(a) Except for Reconciliation Disputes subject to Section 7.08, any and all disputes which cannot be settled after good faith negotiation, including any ancillary claims of any Party, arising out of, relating to or in connection with the validity, negotiation, execution, interpretation, performance or non-performance of this Agreement (including the validity, scope and enforceability of this arbitration provision), shall be finally settled by arbitration conducted in St. Louis, Missouri by a single arbitrator in accordance with the then-existing Rules of Arbitration of the International Chamber of Commerce. If the Parties to the dispute fail to agree on the selection of an arbitrator within thirty (30) calendar days of the receipt of the request for arbitration, the International Chamber of Commerce shall make the appointment. The arbitrator shall be a lawyer and shall conduct the proceedings in the English language. Performance under this Agreement shall continue if reasonably possible during any arbitration proceedings.

(b) Notwithstanding the provisions of Section 7.07(a), any Party may bring an action or special proceeding in any court of competent jurisdiction for the purpose of compelling a Party to arbitrate, seeking temporary or preliminary relief in aid of an arbitration hereunder, and/or enforcing an arbitration award and, for the purposes of this Section 7.07(b), each Party (i) expressly consents to the application of Section 7.07(c) to any such action or proceeding, and (ii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate.

(c) Each Member hereby irrevocably submits to the jurisdiction of the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court for the purpose of any judicial proceeding brought in accordance with the provisions of Section 7.07(b), or any judicial proceeding ancillary to an arbitration or contemplated arbitration arising out of or relating to or concerning this Agreement. Such ancillary judicial proceedings include any suit, action or proceeding to compel arbitration, to obtain temporary or preliminary judicial relief in aid of arbitration or to confirm an arbitration award. The Parties acknowledge that the forum designated by this Section 7.07(c) has a reasonable relation to this Agreement, and to the Parties' relationship with one another.

(d) The Parties hereby waive, to the fullest extent permitted by applicable law, any objection which they now or hereafter may have to personal jurisdiction or to the laying of venue of any such ancillary suit, action or proceeding brought in any court referred to in Section 7.07(c) and the Parties agree not to plead or claim the same.

(e) Each Party irrevocably consents to service of process by means of notice in the manner provided for in Section 7.01. Nothing in this Agreement shall affect the right of any Party to serve process in any other manner permitted by law.

Section 7.08. Reconciliation. In the event that the Corporation and any of the Members are unable to resolve a disagreement with respect to a Schedule prepared in accordance with the procedures set forth in Section 2.04 or Section 4.02 within the relevant period designated in this Agreement, or any other disagreement regarding the calculation of Tax Benefit Payments, the treatment of transactions for tax purposes or any similar matter the resolution of which requires substantial tax expertise (a "Reconciliation Dispute"), the Reconciliation Dispute shall be submitted by the applicable Parties for determination to a nationally recognized expert (the "Expert") in the particular area of disagreement mutually acceptable to the applicable Parties. The Expert shall be a partner in a nationally recognized accounting firm or a law firm (other than the Advisory Firm), and the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporation or the Members or other actual or potential conflict of interest. If the applicable Parties are unable to agree on an Expert within fifteen (15) calendar days after any of the applicable Parties have provided the other applicable Parties with written notice of a Reconciliation Dispute, the Expert shall be appointed by the International Chamber of Commerce Centre for Expertise. The Expert shall resolve any matter relating to the Early Termination Schedule or an amendment thereto within thirty (30) calendar days, and shall resolve any matter relating to a Tax Benefit Schedule or an amendment thereto within fifteen (15) calendar days, or as soon thereafter as is reasonably practicable, in each case after the matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement is due or any Tax Return reflecting the subject of a disagreement is due, such payment shall be made on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporation, subject to adjustment or amendment upon resolution. The costs and expenses related to the engagement of such Expert or amending any Tax Return shall be borne by the Corporation, except as provided in the next sentence. Each of the Corporation and the applicable

Members shall bear their own costs and expenses of such proceeding. Any dispute as to whether a dispute is a Reconciliation Dispute within the meaning of this Section 7.08 shall be decided by the Expert. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.08 shall be binding on the Corporation and the applicable Members and may be entered and enforced in any court having jurisdiction.

Section 7.09. Withholding. The Corporation shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts as the Corporation reasonably believes it is required to deduct and withhold as a result of the execution of this Agreement or with respect to the making of such payment, in each case, under the Code, or any provision of state, local or foreign tax law, provided that the Corporation shall have first notified the applicable Member of its intent to deduct or withhold, and the Corporation and the applicable Member shall have discussed in good faith whether such taxes can be mitigated to the extent permitted under applicable law. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by the Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the relevant Member in respect of whom the deduction and withholding was made. The Corporation shall provide evidence of such payment to the Members to the extent that such evidence is available. Each Member shall promptly provide the Corporation with any applicable tax forms and certifications reasonably requested by the Corporation in connection with determining whether any such deductions and withholdings are required by applicable law.

Section 7.10. Affiliated Corporations; Admission of the Corporation into a Consolidated Group; Transfers of Corporate Assets.

(a) If the Corporation is or becomes a member of an affiliated or consolidated group of corporations that files a consolidated income tax return pursuant to Sections 1501 et seq. of the Code or a similar provision of state or local law (other than if the Corporation becomes a member of such a group as a result of a Change of Control, in which case the provisions of Article IV shall control), then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole and (ii) Tax Benefit Payments and Early Termination Payments shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If any Person, the income of which is included in the income of the Corporation's affiliated or consolidated group, transfers one or more assets to a corporation or any Person treated as such for tax purposes with which such entity does not file a consolidated tax return pursuant to Section 1501 et seq. of the Code, for purposes of calculating the amount of any Tax Benefit Payment (e.g., calculating the gross income of the Corporation's affiliated or consolidated group and determining the Realized Tax Benefit) due hereunder, such Person shall be treated as having disposed of such asset in a fully taxable transaction on the date of such contribution. The consideration deemed to be received by such entity shall be determined as if such transfer occurred on an arm's-length basis with an unrelated third party. For purposes of this Section 7.10, a transfer of a partnership interest shall be treated as a transfer of the

transferring partner's applicable share of each of the assets and liabilities of that partnership. Notwithstanding anything to the contrary set forth herein, if the Corporation or any other entity that is obligated to make a Tax Benefit Payment or Early Termination Payment hereunder transfers its assets pursuant to a transaction that qualifies as a "reorganization" (within the meaning of Section 368(a) of the Code) in which such entity does not survive or pursuant to any other transaction to which Section 381(a) of the Code applies, the transfer will not cause such entity to be treated as having transferred any assets to a corporation (or a Person classified as a corporation for U.S. income tax purposes) pursuant to this Section 7.10(b).

Section 7.11. Change in Law. Notwithstanding anything herein to the contrary, if, in connection with an actual or proposed change in law, a Member reasonably believes that the existence of this Agreement could cause material adverse tax consequences to such Member or any direct or indirect owner of such Member, then at the written election of such Member in its sole discretion (in an instrument signed by such Member and delivered to the Corporation) and to the extent specified therein by such Member, this Agreement shall cease to have further effect and shall not apply to any Basis Transactions occurring after a date specified by such Member, or may be amended in a manner reasonably determined by such Member, provided that such amendment shall not result in an increase in any payments owed by the Corporation under this Agreement at any time as compared to the amounts and times of payments that would have been due in the absence of such amendment.

Section 7.12. Interest Rate Limitation. Notwithstanding anything to the contrary contained herein, the interest paid or agreed to be paid hereunder with respect to amounts due to any Member hereunder shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If any Member shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the Tax Benefit Payment or Early Termination Payment, as applicable (but in each case exclusive of any component thereof comprising interest) or, if it exceeds such unpaid non-interest amount, refunded to the Corporation. In determining whether the interest contracted for, charged or received by any Member exceeds the Maximum Rate, such Member may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the payment obligations owed by the Corporation to such Member hereunder. Notwithstanding the foregoing, it is the intention of the Parties to conform strictly to any applicable usury laws.

Section 7.13. Independent Nature of Rights and Obligations. The rights and obligations of each Member hereunder are several and not joint with the rights and obligations of any other Person. A Member shall not be responsible in any way for the performance of the obligations of any other Person hereunder, nor shall a Member have the right to enforce the rights or obligations of any other Person hereunder (other than the Corporation). The obligations of a Member hereunder are solely for the benefit of, and shall be enforceable

solely by, the Corporation. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Member pursuant hereto or thereto, shall be deemed to constitute the Members acting as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Members are in any way acting in concert or as a group with respect to such rights or obligations or the transactions contemplated hereby, and the Corporation acknowledges that the Members are not acting in concert or as a group and will not assert any such claim with respect to such rights or obligations or the transactions contemplated hereby.

[Signatures pages follow]

CORPORATION:

BELLRING BRANDS, INC.

By: /s/ Darcy Horn Davenport

Name: Darcy Horn Davenport

Title: President and Chief Executive Officer

BELLRING LLC:

BELLRING BRANDS, LLC

By: /s/ Darcy Horn Davenport

Name: Darcy Horn Davenport

Title: President and Chief Executive Officer

POST:

POST HOLDINGS, INC.

By: /s/ Diedre J. Gray

Name: Diedre J. Gray

Title: Executive Vice President, General Counsel and
Chief Administrative Officer, Secretary

[Signature page to Tax Receivable Agreement]

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of _____, 20____ (this "Joinder"), is delivered pursuant to that certain Tax Receivable Agreement, dated as of October 21, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Tax Receivable Agreement") by and among BellRing Brands, Inc., a Delaware corporation (the "Corporation"), BellRing Brands, LLC, a Delaware limited liability company, and each of the Members from time to time party thereto. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in the Tax Receivable Agreement.

1. Joinder to the Tax Receivable Agreement. The undersigned hereby represents and warrants to the Corporation that, as of the date hereof, the undersigned has been assigned an interest in the Tax Receivable Agreement from a Member.
2. Joinder to the Tax Receivable Agreement. Upon the execution of this Joinder by the undersigned and delivery hereof to the Corporation, the undersigned hereby is and hereafter will be a Member under the Tax Receivable Agreement and a Party thereto, with all of the rights, privileges and responsibilities of a Member thereunder. The undersigned hereby agrees that it shall comply with and be fully bound by the terms of the Tax Receivable Agreement as if it had been a signatory thereto as of the date thereof.
3. Incorporation by Reference. All terms and conditions of the Tax Receivable Agreement are hereby incorporated by reference in this Joinder as if set forth herein in full.
4. Address. All notices under the Tax Receivable Agreement to the undersigned shall be directed to:

[Name]
[Address]
[City, State, Zip Code]
Attn:
E-mail:

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Joinder as of the day and year first above written.

[Exhibit A]

[NAME OF NEW PARTY]

By: _____
Name:
Title:

Acknowledged and agreed
as of the date first set forth above:

BellRing Brands, Inc.

By: _____
Name:
Title:

[Exhibit A]

MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT (this "Agreement"), dated as of October 21, 2019, is made by and among Post Holdings, Inc., a Missouri corporation, ("Post"), BellRing Brands, Inc., a Delaware corporation ("BellRing Inc.") and BellRing Brands, LLC, a Delaware limited liability company ("BellRing, LLC").

RECITALS

A. BellRing Inc., BellRing, LLC and Post are parties to that certain Master Transaction Agreement, dated as of October 7, 2019 (the "Transaction Agreement").

B. As part of the transactions described in the Transaction Agreement, Post has agreed to provide or cause to be provided certain services to BellRing Inc., BellRing LLC or BellRing LLC's Subsidiaries from and after the Effective Time on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby approve and adopt this Agreement and mutually covenant and agree with each other as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION; CONSTRUCTION

Section 1.1 Certain Defined Terms. Unless otherwise provided herein, the capitalized terms used herein shall have the meanings given to them in the Transaction Agreement. In addition to the other terms defined elsewhere in this Agreement, for the purposes of this Agreement, the following terms shall have the meaning set forth below:

"Applicable Law" shall mean any Law(s) in any jurisdiction applicable to a given activity, service, situation, circumstance, Service Provider, Recipient, other Person or provider, this Agreement or the rights, obligations and benefits of the parties hereunder, including the performance or receipt of any Service hereunder.

"Recipient Change of Control" of BellRing Inc., BellRing LLC and each of the other Recipients shall have occurred in the event any transaction or series of transactions (however structured or evidenced) is/are consummated:

(a) which result(s) in Post no longer controlling more than 50% of the combined voting power of the capital stock of BellRing Inc. entitled to vote generally in the election of directors of BellRing Inc. (including, for avoidance of doubt, (x) the granting or entry into by Post or any of its Affiliates (other than BellRing Inc. or any of its Subsidiaries) of proxies, voting agreements or other voting arrangements with third parties in accordance with the BellRing Limited Liability Company Agreement pursuant to which such third parties have the right to direct how Post or any of its Affiliates (other than BellRing Inc. or any of its Subsidiaries) shall cast all or a portion of the votes to which the Class B Common Stock of BellRing Inc. is entitled, or (y) the distribution by Post of its retained beneficial interest in BellRing Inc. by means of a tax-free spin-off or split-off to its shareholders (however structured)),

(b) involve(s) the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the assets of BellRing Inc. and its Subsidiaries taken as a whole, or

(c) which (i) result(s) in such Recipient no longer being a direct or indirect Subsidiary of BellRing Inc. or (ii) involve(s) the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the assets of such Recipient.

“Post Change of Control” shall mean, with regard to Post, a “Change in Control” as defined in the Post Holdings, Inc. 2019 Long-Term Incentive Plan except that the requirement in such definition that an event described therein must also constitute a “change in control event” under Section 409A of the Code shall not apply to, or be required to be considered, a “Post Change of Control” for the purposes of this Agreement.

“Recipient” shall mean, as applicable, BellRing LLC or one of its Subsidiaries and, with respect to its operation as a public holding company, BellRing Inc., to the extent any such entity is receiving Services pursuant to this Agreement.

“Service Provider” shall mean Post or one of its Affiliates to the extent such entity is providing Services pursuant to this Agreement.

“Services” shall mean the services described on the schedules forming Exhibit A, attached hereto and incorporated herein by this reference (collectively, the “Services Schedules” and each a “Services Schedule”).

Section 1.2 Interpretive Matters.

(a) Except as otherwise provided or unless the context otherwise requires, whenever used in this Agreement, (i) any noun or pronoun shall be deemed to include the plural and the singular, (ii) the use of masculine pronouns shall include the feminine and neuter, (iii) the terms “include” and “including” shall be deemed to be followed by the phrase “without limitation,” (iv) the word “or” shall be inclusive and not exclusive, (v) all references to Sections refer to the Sections of this Agreement, and all references to Exhibits refer to the Exhibits attached to this Agreement, (vi) each reference to “herein” means a reference to “in this Agreement,” (vii) each reference to “\$” or “dollars” shall be to United States dollars, (viii) each reference to “days” shall be to calendar days, (ix) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if” (x) each reference to any contract or agreement shall be to such contract or agreement as amended, supplemented, waived or otherwise modified from time to time, (xi) unless expressly provided otherwise, the measure of a period of one month or year for purposes of this Agreement shall be that date of the following month or year corresponding to the starting date; provided that if no corresponding date exists, the measure shall be that date of the following month or year corresponding to the next day following the starting date (for example, one month following February 18 is March 18, and one month following March 31 is May 1), (xii) a reference to an entity includes any successor entity, whether by way of merger, amalgamation, consolidation or other business combination and (xiii) if any payment required to be made hereunder is required to be made on a day that is not a Business Day, then, instead of such day, such payment shall be made on the immediately succeeding Business Day.

(b) The headings contained in this Agreement and in any Exhibit hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The provisions of this Agreement shall be construed according to their fair meaning and neither for nor against any party hereto irrespective of which party caused such provisions to be drafted. Each of the parties hereto acknowledges that it has been represented by an attorney in connection with the preparation and execution of this Agreement.

ARTICLE II
SERVICES

Section 2.1 Services and Contracts.

(a) Services. Service Provider shall provide, or cause to be provided, to Recipient or its Subsidiaries, the Services. For each Service, Exhibit A sets forth, among other things, a description of the Service to be provided, the fees to be paid in respect thereof, and, if applicable, any other terms or standards applicable thereto. Service Provider shall perform, or cause to be performed, the Services (i) in a commercially reasonable manner with a degree of care, and at a level of quality, timeliness, efficacy, priority and service, at least consistent with that provided by Service Provider or its Affiliates to similarly-situated Affiliates of Post (i.e., Affiliates of Post that are of similar size and operations and are similarly relying on Service Provider or its Affiliates for such or similar services) and (ii) in accordance with applicable industry standards and any specific terms and/or performance standards set forth in this Agreement and the relevant Services Schedule. In providing the Services, Service Provider shall comply with all Applicable Laws.

(b) Contracts. Post and its Subsidiaries have certain contracts or agreements under which it and its Affiliates may purchase, procure, use or utilize goods and/or services as an Affiliate of Post and/or the given contracting Affiliate of Post (collectively the "Shared Contracts" and each individually a "Shared Contract"). Shared Contracts will change from time to time in the ordinary course of Post's and the applicable Affiliate's business, and none of Post or any of its Affiliates are obligated to have or maintain any, or any certain, Shared Contract(s) during the term of this Agreement. Pursuant to the terms of the given Shared Contract, Recipient, as an Affiliate of Post or the given contracting Post Subsidiary, may have the right to purchase, procure, use or utilize goods and/or services and/or to execute purchase orders or statements of work (jointly and/or separately from Service Provider) under such Shared Contract. Service Provider agrees to use commercially reasonable efforts to facilitate Recipient's receipt of goods and/or services and/or execution of purchase orders or statements of work under the Shared Contracts. Service Provider further agrees to use commercially reasonable efforts to ensure that Recipient is treated on the same or substantially similar terms as similarly-situated Affiliates of Post. Service Provider shall notify Recipient of any material changes to Shared Contracts that could affect Recipient's receipt of the Services. All fees, costs and expenses associated with Recipient's receipt of any goods and/or services under the Shared Contracts that are incurred by Service Provider shall be reimbursable out-of-pocket expenses passed-through to and payable by Recipient pursuant to Section 4.1. Recipient and each of its Subsidiaries shall comply with each Shared Contract to the extent that such Shared Contract is applicable to Recipient or such Subsidiary and, upon Recipient's request, either a copy of such Shared Contract shall be made available to Recipient (with any information reasonably considered by Service Provider to be proprietary or confidential redacted) or a summary of the substantive purchase or use terms of such Shared Contract that are applicable to Recipient or its Subsidiary shall be made available to Recipient. Service Provider and each of its Affiliates shall comply with each Shared Contract to the extent such Shared Contract is applicable to Service Provider or such Affiliate.

Section 2.2 Modification of Existing Services. From time to time, Recipient or Service Provider may desire to implement changes to the Services. Such party will notify the other party through its Service Manager (as defined below) of the desired change. The parties will discuss in good faith the nature of the modification to the Services and any resulting changes in fees, costs, specifications and scheduling. Changes to Services will only be effective upon the mutual written agreement of the parties.

Section 2.3 Additional Services. If Recipient reasonably requests that Service Provider perform additional services not included within the scope of the Services specified in this Agreement that are necessary for, with respect to BellRing LLC, the operation of Recipient's or one of its Subsidiaries' business or, with respect to BellRing Inc., its operation as a public holding company, then the parties will promptly negotiate in good faith regarding whether such additional services should be added to this Agreement and any additional charges that will be paid by Recipient for such additional services. Service Provider will not be obligated to perform any additional services unless the parties so agree in writing.

Section 2.4 Subcontractors; Service Providers. The Services may, at Service Provider's sole discretion, be provided in whole or in part by Affiliates of Service Provider or by third party subcontractors or service providers selected by Service Provider, provided that, Service Provider shall obtain Recipient's prior written consent to subcontract any Service in whole to a third party subcontractor or service provider that is not an Affiliate of the Service Provider where such Service will be provided by such third party subcontractor or service provider solely to Recipient (i.e., consent is not required for Service Provider's subcontracts where services are performed for Post or its other Affiliates along with Recipient, but consent is required for any subcontract to be dedicated to Recipient alone). Service Provider shall retain responsibility for the provision to Recipient of any Services regardless of whether such Service is performed by any such Affiliate, third party subcontractor or third party service provider.

Section 2.5 Personnel. All Service Provider's (or its Affiliates', third party contractors' or service providers') personnel providing Services under this Agreement will be under the direction, control, and supervision of Service Provider, and Service Provider will have the sole right to exercise all authority with respect to the employment, termination, assignment and compensation of Service Provider's (or such Affiliates', third party contractors' or service providers') personnel. Service Provider is not obligated to hire any additional employees or maintain the employment of any specific employee. All Service Provider's (or such Affiliates', third party contractors' or service providers') personnel providing Services under this Agreement will be deemed to be representatives solely of Service Provider (or such Affiliates, third party contractors or service providers) for purposes of all compensation and (as applicable) employee benefits and not to be employees or representatives of Recipient.

Section 2.6 Compliance with Policies; Safety of Personnel. Recipient acknowledges that Service Provider has instituted and may continue to institute and revise a variety of policies and procedures related to its operations and the provision of the Services. Service Provider shall perform all Services in a manner that is consistent with such policies and procedures of Service Provider and any reasonable policies and procedures of Recipient, including, in each case, those relating to anti-trust, health, safety and environmental laws, to the extent that (i) such policies and procedures of Recipient have been provided to Service Provider, (ii) such policies and procedures of Recipient do not conflict with Service Provider's own policies and procedures and (iii) the subject Services are not also being jointly performed for Post or one or more of its Affiliates. Service Provider shall use reasonable efforts to provide Recipient with advance written notice in the event Service Provider believes any Service is not consistent with Recipient's policies or procedures where the same would have a material adverse effect on the Services to be provided. To the extent Services are performed onsite at Recipient's place(s) of business, Service Provider will be permitted to withdraw any personnel providing Services at that time if Service Provider has a reasonable opinion that such personnel face any risk to their personal safety.

Section 2.7 Third Party Costs and Consents. The parties will work together to obtain any consents required for the provision of the Services for Recipient by the applicable Service Provider hereunder (the "Required Consents"). Service Provider shall directly pay any amounts that are required to be paid to any licensors or third party providers in order to obtain the Required Consents that are necessary for the provision of the Services to Recipient, including without limitation, any consent or documentation fees; provided, however, that the costs associated with the purchase or maintenance of additional licenses or use rights required for Recipient to use or utilize a given product or service that is being provided as a Service hereunder will be reimbursable out-of-pocket expenses paid by Recipient pursuant to Section 4.1(a). For example, if a given Service involves providing Recipient (for its own use)

40 licenses of “Software Product X,” the costs associated with purchasing and maintaining such 40 licenses will be reimbursed by Recipient, but the costs associated with obtaining the consent from the third party provider of “Software Product X” necessary for Recipient to use such 40 licenses under Post’s license agreement with such third party provider (if such consent is required) would be Service Provider’s responsibility. Notwithstanding anything contained in this Agreement or the Transaction Agreement, Service Provider shall not be required to provide any Services to the extent that a Required Consent is needed for such Services and such Required Consent has not been, or cannot be, obtained despite Service Provider’s commercially reasonable attempts to do so, or if providing such Services would otherwise violate the terms of any of Service Provider’s agreements with its third party providers. Notwithstanding the foregoing, if Service Provider is not able to obtain any such Required Consent, despite Service Provider’s commercially reasonable attempts to do so, Service Provider shall promptly notify Recipient thereof and the parties will work together to arrange an alternative means of providing such Service or for Recipient to receive the Service, which may include Recipient obtaining replacement services directly from a third party provider.

Section 2.8 Services Managers. Service Provider and Recipient shall select one or more service managers (each a “Service Manager”) to act as its primary contact person(s) for the provision or receipt, as applicable, of the Services. Communications relating to the provision of the particular Services shall be directed to the applicable Service Manager of the other party. A party may change a Service Manager upon prior written notice to the other party, provided, however, that, before assigning a new Service Manager, such party will notify the other of the proposed assignment, introduce the individual to the appropriate representatives of the other party and provide such party with any information regarding the individual that may be reasonably requested by the other party. Service Provider’s Service Manager shall initially be Bryan Schack. Recipient’s Service Manager shall initially be Paul Rode.

ARTICLE III PROVISION OF SERVICES

Section 3.1 No Secondment. For the avoidance of doubt, Service Provider is not under any obligation to second or procure the secondment to Recipient of any employee or other personnel in connection with the provision of the Services.

Section 3.2 Access to and Use of Facilities. To the extent reasonably required to perform the Services hereunder, Recipient will provide (or as necessary will cause its Affiliates to provide) Service Provider with access to and use of such Recipient’s applicable facilities. Recipient shall provide all information reasonably required or requested by Service Provider to perform its obligations under this Agreement. Any visit to any of Recipient’s facilities required in connection with the Services will be provided at Recipient’s sole risk except with respect to any violation of Law, negligence or willful misconduct by Service Provider, its Affiliates or its or their respective Representatives. Recipient shall be liable for, and shall fully defend, indemnify and hold Service Provider and its Affiliates harmless from, any and all injuries or death suffered by any Service Provider personnel arising in connection with any visit by such personnel to Recipient’s facilities to the extent such injury or death is caused by Recipient’s violation of Law, negligence or willful misconduct.

Section 3.3 Dispute Resolution. In the event that the parties are unable to agree upon any matters related to the performance of Services under this Agreement, the disputed matter will be first referred to the Service Managers for resolution. If a mutually acceptable agreement is not reached within a reasonable time, the matter will then be referred to the applicable senior management at each party hereto for resolution. Thereafter, the parties may seek the other rights and remedies available to such party. This Section 3.3 in no way limits, delays or restricts a party’s ability to seek specific performance, injunctive relief or other equitable relief as provided under Section 12.12.

ARTICLE IV
PAYMENT FOR SERVICES

Section 4.1 Payment Obligation.

(a) Recipient shall pay Service Provider or, to the extent specified on an invoice delivered to Recipient pursuant to Section 4.3, an applicable Affiliate thereof, the undisputed fees described on the applicable Services Schedule for the Services provided to Recipient by Service Provider *plus* Recipient shall reimburse Service Provider for all reasonable, documented, undisputed out-of-pocket expenses incurred by Service Provider during the rendering of the applicable Services for Recipient (including third party contractors or professional fees and any license, service or access fees, including any third party vendor fees and other third party supply costs). For avoidance of doubt, the monthly costs/fees set forth on Exhibit A do not include any third party costs or pass through expenses (whether separately billed to Recipient or amounts allocated to Recipient out of the overall bill to Service Provider) paid by Service Provider for goods and services used by Recipient, but Service Provider has provided in the footnotes to the Services Schedules estimates of what Service Provider believes, as of the Effective Time, the reimbursable expenses for certain given Services may be. All such third party costs and pass through expenses will be reimbursed by Recipient as provided above. For example, the monthly costs/fees on Exhibit A do not include any license fees paid for any software licenses or services purchased by Service Provider and used by Recipient.

(b) Monthly Cost/Fee Adjustments. Beginning on the anniversary of the Effective Time (starting the next term year), the monthly costs/fees for the given Services for which there has not been a monthly costs/fees adjustment shall automatically increase by two and ½ percent (2.5%) over the monthly costs/fees charged for such Services during the just completed term year. Such monthly costs shall continue in effect until the monthly costs/fees are again adjusted (whether automatically as provided above or upon mutual agreement of the parties).

Section 4.2 Certain Third Party Costs. Recipient acknowledges and agrees that the prices charged by third party suppliers for any goods (e.g., software, raw materials and packaging) and services (e.g., promotions) procured from third party service providers which Service Provider is procuring on Recipient's behalf as part of the Services provided hereunder may be subject to fluctuation and, as such, Service Provider cannot guarantee that it will be able to maintain certain pricing levels for any such goods or services. Recipient shall reimburse Service Provider for the applicable amounts charged by such third parties to Service Provider to purchase such goods and services, regardless of any such fluctuation in price.

Section 4.3 Invoices; Payment Due Date. Unless otherwise agreed to by Service Provider and Recipient in accordance with past practice, Service Provider or an applicable Affiliate thereof shall provide Recipient with a monthly invoice reflecting in reasonable detail (a) the Services provided during the preceding month, (b) monthly costs/fees owed for such Services and (c) all reasonable out-of-pocket expenses incurred by Service Provider or its Affiliates. All amounts shall be due and payable within thirty (30) days of the date the invoice is received. In the event Recipient disputes the amounts reflected on an invoice, Recipient shall deliver a written statement to Service Provider or such Affiliate within ten (10) days following receipt of Service Provider's or such Affiliate's invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed shall be deemed accepted and shall be paid, notwithstanding disputes on other items.

Section 4.4 Interest on Late Payment. Any amounts owed by Recipient under this Agreement that are not paid when due shall bear interest, from the time the payment was due until the time paid, at a rate per annum compounded annually, equal to the lesser of one and a half percent (1.5%) per month or the highest rate allowed by Applicable Law.

Section 4.5 Taxes. The fees under this Agreement exclude all applicable excise, sales, use, value added, goods and services or similar tax imposed by any federal, state, provincial, local or foreign taxing authority (“Sales Tax” or “Sales Taxes”), and Recipient will be responsible for payment of all such Sales Taxes for which Recipient bears primary liability under applicable law and any related penalties and interest arising from the payment of fees and expenses to Service Provider or its Affiliates. Recipient shall be entitled to withhold from any payment hereunder all taxes as are required to be withheld under Applicable Law. Service Provider and Recipient shall reasonably cooperate to minimize any applicable withholding taxes. For the avoidance of doubt, all taxes levied on Services Provider’s income or gross receipts or any franchise taxes of Service Provider shall be Service Provider’s responsibility.

Section 4.6 Expenses. Except as otherwise specified in this Agreement (including Section 4.1), each party hereto shall pay its own legal, accounting, out-of-pocket and other expenses incident to this Agreement and to any action taken by such party in carrying this Agreement into effect.

ARTICLE V SERVICE STANDARDS

Section 5.1 Standard of Service. Service Provider warrants that the Services will be provided in a workmanlike and professional manner by personnel of Service Provider or its Affiliates having a level of skill in the area commensurate with the requirements of the scope of Services to be performed as described in the Service Schedules.

Section 5.2 Remediation. Recipient agrees that the remedies available to it in the event of a failure of Service Provider to provide the Services in accordance with the applicable Services Schedule in breach of the warranty set forth in Section 5.1 should be limited to Service Provider using commercially reasonable efforts to correct the problems that resulted in such failure, and therefore no service credits, rebates or refunds will be awarded for a failure to provide the Services. In recognition of this, except with respect to Service Provider’s indemnification obligations in Section 8.2, Recipient’s sole and exclusive remedy, and Service Provider’s sole and exclusive obligation, for any breach of the warranty set forth in Section 5.1 shall be the remediation activities set forth in this Section 5.2. In the event Service Provider does not provide a Service as specified in the applicable Services Schedule, then Service Provider agrees that it will use its commercially reasonable efforts to re-perform the applicable Service as soon as reasonably practicable thereafter.

ARTICLE VI CONFIDENTIALITY

Section 6.1 Definition. “Confidential Information” means, with regard to any party hereto disclosing such information (the “Disclosing Party”), the terms of this Agreement and any technical or non-technical confidential or proprietary information disclosed or otherwise made available in any manner by the Disclosing Party to the other party to this Agreement (the “Receiving Party”), or to which the Receiving Party may gain access because of this Agreement, whether disclosed orally, electronically, visually or in writing. “Confidential Information” shall not include information (a) which is or becomes generally known or available by publication without violation of this Agreement; (b) which was known by the Receiving Party before receipt from the Disclosing Party as shown by the Receiving Party’s written records; (c) which is independently developed by the Receiving Party without use of or access to the Disclosing Party’s Confidential Information as shown by the Receiving Party’s written records; or (d) which is lawfully obtained from a third party that has the right to make such disclosure as shown by the Receiving Party’s written records.

Section 6.2 Obligations. The Receiving Party agrees that, except as otherwise required by Applicable Law or order, it will (a) not use, reproduce, or exploit the Confidential Information of the Disclosing Party for any purpose other than performing or receiving Services as specified in this Agreement; and (b) hold all Confidential Information of the Disclosing Party in strict confidence and will not disclose or otherwise make available such Confidential Information to any third party other than its Representatives, third party contractors, advisors, Affiliates, actual or potential investors or financing sources and their advisors and Representatives, and the employees of the Receiving Party or its Representatives, third party contractors, advisors and Affiliates (i) who have a need to know such information for purposes of fulfilling the Receiving Party's obligations, utilizing or enforcing the Receiving Party's rights, or utilizing the Services provided, under this Agreement and (ii) who are bound by confidentiality obligations at least as stringent as those contained in this Agreement.

Section 6.3 Compelled Disclosure. In the event that the Receiving Party is required by Law or court decision, order or judgment to disclose any Confidential Information, the Receiving Party shall (a) to the extent permitted, notify the Disclosing Party in writing as soon as reasonably practicable; (b) reasonably cooperate with the Disclosing Party to preserve the confidentiality of such Confidential Information consistent with Law and (c) use its reasonable efforts to limit any such disclosure to the minimum disclosure necessary to comply with such Law or court decision, order, or judgment.

Section 6.4 Termination. Upon termination of this Agreement in accordance with Article XI, the Receiving Party shall destroy all documents and materials in tangible form, and delete all data in electronic form, containing any Confidential Information of the Disclosing Party. Notwithstanding the foregoing, the parties hereto acknowledge that certain systems that may be utilized by a Receiving Party do not easily permit the true purging or deletion of data (e.g., email backup systems). In such cases, the Receiving Party shall be permitted to retain such data so long as such data is not readily available to end users and otherwise remains subject to the confidentiality provisions of Section 6.1 and Section 6.2. In addition, the Receiving Party shall be permitted to retain such copies of Confidential Information as required by Applicable Law or legitimate record retention policies, so long as such Confidential Information is not readily accessible and otherwise remains subject to the confidentiality provisions of Section 6.1 and Section 6.2.

Section 6.5 Data Security.

(a) The systems and security tools and processes utilized by Service Provider to perform the Services and to which Recipient is given access are either jointly operated and/or used systems (shared systems) or mutually dependent systems, and so both parties have joint obligations to protect the systems, environments and data used or utilized by the parties. Generally speaking, the data security duties are divided as follows:

(i) identification of security threats and vulnerabilities—Service Provider provides the security guidelines, policies, tool standards and timelines for security reviews (such as third party penetration testing and security assessments) and Recipient is responsible for timely and full participation in such identification efforts, with prompt response and commercially reasonable attempted remediation of any threat or issue found and for security (e.g., phishing) awareness and actions of users;

(ii) protection against threats or issues – Service Provider is responsible for protection of the shared services (services shared by Post, Recipient and other Affiliates) but Recipient is responsible for the host (e.g., PCs, laptops, servers, handhelds, and other end user devices), network and other protection of systems or services used or utilized by Recipient. Recipient's protection responsibilities also include reasonable adherence to all security policies, guidelines, standards and processes, protection of devices connected to and accessing shared services and reasonably complete implementation and use of protection mechanisms involved in access/use of shared services under this Agreement, including multi-factor authentication and testing of user password strength;

(iii) detection of threats or issues – Recipient is responsible for implementing at least the tools generally recommended by Service Provider to its Affiliates as necessary to detect the threats or issues within the systems and Service Provider is responsible for assisting in monitoring and notifying Recipient of issues detected; and

(iv) response to and recovery after, an incident or vulnerability has been detected or issues have arisen—Service Provider coordinates joint response and recovery with regard to shared systems and Recipient is responsible for the response and recovery for all other systems used or utilized by Recipient.

For avoidance of doubt and notwithstanding anything herein to the contrary, Recipient is exclusively responsible for the protection, privacy and security within the manufacturing facilities and the plant technical environments (e.g. industrial control systems and related network security). Thus, the parties agree to cooperate in matters related to data protection and security. As part of such cooperation, Service Provider will develop and maintain certain enterprise-wide policies, processes, guidelines and architecture for data protection and security, Service Provider will develop and institute projects to accomplish the forgoing and all parties shall implement and maintain commercially reasonable technical and organizational measures to protect against any loss, destruction and damage and unauthorized access, use, modification, disclosure and other misuse, of (A) data or information of Recipient that is collected, processed, generated, calculated, derived, stored by or transmitted to Service Provider, any of its Affiliates or any other Person on its or their behalf in connection with the Services (such data and information, “Recipient Data”) and (B) any data or information of Service Provider used, utilized or disclosed to Recipient in connection with the Services (“Service Provider Data”). Furthermore, Recipient shall use commercially reasonable efforts to (X) timely comply with, implement and participate in such policies, procedures and projects and all changes thereto throughout the term of this Agreement, (Y) timely deploy, implement and participate in the security assessments, penetration testing, security vulnerability and issue detection efforts and deployment of additional security tools as directed by Service Provider and (Z) promptly respond to and make a commercially reasonable attempt to remediate all threats, vulnerabilities, issues or harm found. It is understood that Service Provider’s ability to protect and/or secure the systems, environments and data is only as good, effective and efficient as the level of sophistication, implementation and maintenance of Recipient’s own protection and security efforts. Service Provider is not responsible for any harm or damage resulting from Recipient failing to implement and maintain the policies, processes, guidelines and architecture provided by Service Provider, from Recipient failing to adequately protect and secure its own systems or facilities or from Recipient failing to perform its own data security duties in a timely and adequate manner.

(b) Promptly upon discovery of (i) an actual or suspected breach of the privacy or security of any Recipient Data or any Service Provider Data or (ii) any violation of any privacy or data security Laws with respect to Recipient Data or Service Provider Data, the discovering party shall use commercially reasonable efforts to provide notice to the other parties explaining the nature and scope of the incident and reasonably cooperate with the other parties in any investigation and remediation that the parties mutually agree are reasonably necessary (including any forensic investigation).

ARTICLE VII REPRESENTATIONS AND WARRANTIES

Section 7.1 Mutual Representations. Each party represents and warrants to the other parties that it has the requisite corporate or other organizational power and authority to enter into and perform its obligations under this Agreement and has taken all corporate or other organizational action necessary to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

Section 7.2 Disclaimer. Except as expressly set forth in this Agreement, no party makes any representation or warranty to the other parties, express or implied, with respect to the provision or receipt of the Services and all information or other deliverables provided by any party pursuant to this Agreement, including any representation or warranty as to merchantability, fitness for a particular purpose or future results. Each party hereby acknowledges that, other than as expressly provided in this Agreement, the Services and all information or deliverables provided hereunder are being provided “AS IS WHERE IS,” and each party has relied on its own examination and investigation in electing to enter into, and consummate the transactions under, this Agreement.

ARTICLE VIII INDEMNIFICATION

Section 8.1 Recipient Indemnity. Recipient shall indemnify, defend and hold Service Provider, Service Provider’s Affiliates and their respective Representatives harmless from and against any and all Losses resulting from any third party claims, actions, suits or proceedings or from any action, decision, order or judgment by any Governmental Authority (“Claims”) to the extent such Losses are caused by Recipient’s violation of Law, fraud, willful misconduct or gross negligence in connection with performing its duties, responsibilities and obligations under this Agreement or breach of Article VI, provided that (a) Service Provider notifies Recipient promptly in writing of the Claim once Service Provider becomes aware of such Claim; (b) Recipient has sole control of the defense and all related settlement negotiations, except that Service Provider must provide prior written consent to any settlement that does not expressly and unconditionally release Service Provider from all Liabilities with respect to such Claim without prejudice or that would be adverse to Service Provider, which consent will not be unreasonably withheld; and (c) Service Provider provides Recipient with all reasonably necessary assistance, information and authority, at Recipient’s reasonable expense, to perform these duties.

Section 8.2 Service Provider Indemnity. Service Provider shall indemnify, defend and hold Recipient, Recipient’s Affiliates and their respective Representatives harmless from and against any and all Losses resulting from any Claims to the extent such Losses are caused by Service Provider’s violation of Law, fraud, willful misconduct or gross negligence in connection with performing its duties, responsibilities and obligations under this Agreement or breach of Article VI, provided that (a) Recipient notifies Service Provider promptly in writing of the Claim; (b) Service Provider has sole control of the defense and all related settlement negotiations, except that Recipient must provide prior written consent to any settlement that does not expressly and unconditionally release Recipient from all Liabilities with respect to such Claim without prejudice or that would be adverse to Recipient, which consent will not be unreasonably withheld; and (c) Recipient provides Service Provider with all reasonably necessary assistance, information and authority, at Service Provider’s reasonable expense, to perform these duties.

ARTICLE IX LIMITATION OF LIABILITY

Section 9.1 Limitations on Claims. No party shall have any liability to another party under this Agreement unless a claim is made in writing by the first party within sixty (60) days after the circumstances giving rise to the claim first become known to the first party, or could, with reasonable diligence, have become known to the first party.

Section 9.2 Limitation of Liability. Except as set forth in Section 9.3, (i) in no event shall a party have any liability to another party for any punitive damages, lost profits, diminution of value, consequential damages, special damages, incidental damages, indirect damages, exemplary damages or other similar unforeseen damages, (ii) in no event shall any multiples or similar valuation methodology (whether based on “multiple of profits,” “multiple of earnings,” “multiple of cash flows” or similar terms) be used in calculating the amount of any liability and (iii) to the maximum extent permitted by Applicable

Law, each party's (which, for the purposes of this Section 9.2, a "party" includes the party and all of the Affiliates of such party and all of its respective Representatives) aggregate liability to another party in connection with a particular Service under this Agreement shall not exceed the greater of (A) the amounts expected to be paid by Recipient to Service Provider for such Service in the twelve (12) month period following the Effective Time; and (B) amounts paid to such Service Provider under this Agreement for such Service in the twelve (12) month period immediately preceding the event giving rise to the given claim.

Section 9.3 Exceptions. Notwithstanding anything herein to the contrary, the parties hereby acknowledge and agree that none of the limitations, waivers or restrictions on Losses, Liabilities, damages or claims set forth in Section 9.1 or Section 9.2 shall apply to or any way affect a party's Liability for, or a party's ability to recover for, (i) a material breach of this Agreement arising from any breach of a Shared Contract or (ii) any breach of Article VI.

Section 9.4 Acknowledgement of Limitations. Each party agrees that in the absence of limitations of liability and claims and waivers of damages set forth in this Article IX, the economic and other terms of this Agreement would be substantially different.

ARTICLE X INTELLECTUAL PROPERTY

Section 10.1 Intellectual Property. To the extent Service Provider uses any know-how, processes, technology, trade secrets or other Intellectual Property Rights owned by or licensed to Service Provider or any of its Affiliates ("Service Provider IP") in providing the Services, Service Provider IP and any derivative works of, or modifications or improvements to, Service Provider IP conceived or created by Service Provider or its Affiliates ("Improvements") shall, as between the parties, remain the sole property of Service Provider. Recipient shall and hereby does assign to Service Provider, and agrees to assign automatically in the future upon first recordation in a tangible medium or first reduction to practice, all of Recipient's right, title and interest in and to all Improvements, if any. Service Provider hereby, on behalf of itself and its Affiliates, grants to Recipient and its Affiliates a worldwide, nonexclusive, nontransferable and royalty-free right and license, during the term of the applicable Service, to use, reproduce, distribute and display, as applicable, all Service Provider IP and Improvements to the extent necessary to enable Recipient and its Affiliates to receive, use and utilize the Services only. All rights not expressly granted herein are reserved.

ARTICLE XI TERM, TERMINATION

Section 11.1 Term of Agreement; Early Termination of Services. This Agreement shall continue for so long as Services are provided to Recipient unless sooner terminated by the parties as set forth in this Article XI. Recipient may elect to terminate Service Provider's provision of all or any portion of the Services (or any Service)¹ by providing Service Provider written notice of such election at least sixty (60) days in advance of the effective date of termination of any such Service (unless Service Provider agrees to shorten or waive such notice period in writing). If Service Provider discontinues providing a given Service for its own operations, Service Provider may, upon at least sixty (60) days' notice to Recipient, terminate providing such Service hereunder (e.g., if Service Provider is no longer providing online training services for its own employees, Service Provider may, upon sixty (60) days' notice, terminate any online training services that are Services hereunder). In addition to other termination rights, this Agreement will automatically terminate when all Services have been terminated hereunder.

¹ Certain Services are inter-related and thus would need to be terminated as a whole. For the purposes of Section 11.1, each row in the Service Schedules is considered a single Service. When terminating a given Service, Recipient must terminate all of the services in that given row at the same time.

Section 11.2 Termination upon Breach. In the event of a material breach of this Agreement by a party (the “Breaching Party”), the party claiming the breach (the “Claiming Party”) shall give written notice of such breach to the Breaching Party, which shall have sixty (60) calendar days to cure such breach or, if such breach is capable of cure within a commercially reasonable period of time but cannot reasonably be expected to be cured within sixty (60) calendar days, the Breaching Party shall have sixty (60) calendar days to undertake all available and appropriate action to begin the cure of the breach and shall proceed as promptly as practicable thereafter to effect the cure. In the event of such cure, the notice of breach shall be rescinded. If, however, the breach is not cured as set forth herein, the Claiming Party may then pursue any and all remedies available to it under this Agreement based on such uncured breach, including the right to terminate this Agreement effective on a date of termination prior to the end of the term of this Agreement established by the Claiming Party. Notwithstanding the foregoing provisions of this Section 11.2, Service Provider shall have the right to terminate this Agreement immediately if Recipient fails to make any payment due to Service Provider hereunder within five (5) Business Days after receipt of written notice of such failure, unless the amount in issue is subject to a bona fide dispute between the parties. For the avoidance of doubt, if the amount of any such payment is subject to a bona fide dispute, Recipient shall continue to make all other payments hereunder that are not subject to such dispute in accordance with the terms of this Agreement.

Section 11.3 Termination upon Mutual Agreement. This Agreement may be terminated at any time upon mutual agreement of the parties.

Section 11.4 Termination upon Bankruptcy. Service Provider and Recipient may terminate this Agreement immediately upon the filing by any court of competent jurisdiction (a) of a decision, order or judgment adjudicating the other bankrupt; (b) appointing a trustee or receiver of a substantial part of the property of the other or (c) approving a petition for, or effecting an arrangement in, bankruptcy or any other judicial modification or alteration of the rights of creditors of the other, which remain undismissed or unstayed after sixty (60) days.

Section 11.5 Termination upon Recipient Change of Control Transaction. Upon the occurrence of a Recipient Change of Control of BellRing Inc. or any other Recipient(s), Service Provider shall have the right, upon delivery of written notice to BellRing Inc. or the particular Recipient(s), as the case may be, to terminate this Agreement and/or the Services provided hereunder, in whole or in part as to the particular Recipient(s) suffering the Recipient Change of Control, as determined by Service Provider. Notwithstanding the foregoing, if a Recipient sells a business line or operating division, then Service Provider shall have the right, upon delivery of written notice to such Recipient, to terminate the Services provided hereunder to such business line or operating division, in whole or in part, as determined by Service Provider. In addition, upon the occurrence of a Canadian Change of Control, Service Provider shall have the right, upon delivery of written notice to BellRing Inc. or the particular Recipient(s), as the case may be, to terminate the Canadian Services (as defined in the Services Schedule), in whole or in part, as determined by Service Provider. As used in this Section 11.5, a “Canadian Change of Control” shall have occurred in the event any transaction or series of transactions (however structured or evidenced) is/are consummated which (a) result in Post or one of its wholly-owned subsidiaries no longer controlling more than 50% of the combined voting power of the capital stock of Post Foods Canada Inc. entitled to vote generally in the election of directors of Post Foods Canada Inc. or any successor thereto or (b) involve the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the assets of Post Foods Canada Inc. Notwithstanding the foregoing, if, at the time of a Canadian Change of Control, Post or one of its wholly-owned subsidiaries has an additional wholly-owned

Canadian subsidiary that employs at least ten (10) employees in Ontario, a Canadian Change in Control shall not cause Service Provider to terminate the Canadian Services that are specified as dedicated or additional sales support in the Services Schedule, although such Canadian Services may cease for up to sixty (60) days (and Service Provider shall not be deemed to have breached this Agreement on account of that cessation of Canadian Services) while such Canadian Services are transitioned.

Section 11.6 Termination upon Post Change of Control Transaction. Upon the occurrence of a Post Change of Control, Post, or its successor in interest, shall have the right to terminate this Agreement and the Services provided hereunder upon delivery of written notice to BellRing Inc. and BellRing LLC.

Section 11.7 Effect of Termination. Upon termination of this Agreement, Recipient shall pay all amounts outstanding for Services that have been provided by Service Provider as of the effective date of termination. Upon the termination of any Service or this Agreement, Service Provider and Recipient shall cooperate in good faith to effect an orderly transition of the applicable Service(s) to Recipient or its designee and Service Provider and Recipient shall negotiate in good faith with regard to a plan and agreement for (i) the transition and migration of the given Services from Service Provider's systems, facilities or hosting environments to the systems, facilities and hosting environments of Recipient (or its designee), as applicable, (ii) any Services that will be performed by Service Provider with regard thereto and (iii) the fees and costs that will be paid and/or reimbursed by Recipient for such Services.

Section 11.8 Survival. Section 2.7, Section 2.8, Section 3.2 and Section 3.3 and Article I, Article IV, Article VI, Article VII, Article VIII, Article IX, Article X, this Article XI and Article XII shall survive any termination or expiration of this Agreement.

ARTICLE XII MISCELLANEOUS

Section 12.1 Force Majeure. Service Provider shall not be liable for any failure of performance attributable to acts or events (including acts of God, war, terrorist activities, conditions or events of nature, industry wide supply shortages, civil disturbances, work stoppage, power failures, failure of telephone lines and equipment, fire and earthquake or any Law or decision, order or judgment of any Governmental Authority) beyond its reasonable control which impair or prevent in whole or in part performance by Service Provider hereunder. In the event that Service Provider is unable to perform its duties and obligations hereunder as a result of an event of force majeure, as described in the first sentence of this Section 12.1, Service Provider shall, as promptly as reasonably practicable, give notice of the occurrence of such event to Recipient and shall use its commercially reasonable efforts to resume the Services at the earliest reasonably practicable date. Service Provider shall not be liable for the nonperformance or delay in performance of its obligations under this Agreement to the extent such failure is due to such a force majeure event, provided that if Service Provider fails to perform any Service for fifteen (15) days or more, then Recipient shall have the right to promptly terminate its receipt of such Service upon notice to Service Provider.

Section 12.2 Relationship of the Parties. This Agreement does not create a fiduciary relationship, partnership or joint venture between Post, on the one hand, and BellRing Inc. and BellRing LLC, on the other hand, and does not make Post, on the one hand, or BellRing Inc. and BellRing LLC, on the other hand, the agent of the other for any purpose whatsoever. All Services provided by Service Provider hereunder are provided by Service Provider as an independent contractor. This Agreement does not give any party the authority to commit the other parties to any binding obligation or to execute, on behalf of the other parties, any agreement, lease or other document creating legal obligations on the part of the other parties, and no party shall represent to any third party that it has such authority.

Section 12.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such State.

Section 12.4 Actions and Proceedings. Each of the parties irrevocably agrees that any legal action or proceeding brought by any party with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by another party or its successors or assigns, shall be brought and determined exclusively in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court. Each of the parties hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereby irrevocably waives, and agrees not to assert as a defense, counterclaim or otherwise, in any action or proceeding brought by any party with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 12.4, (b) any claim that it or its property is exempt or immune from the jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) waives, to the fullest extent permitted by Law, any claim that (i) such suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each of the parties irrevocably agrees that, subject to any available appeal rights, any decision, order or judgment issued by such above named courts shall be binding and enforceable, and irrevocably agrees to abide by any such decision, order or judgment. Each of the parties hereto agrees that service of process upon such party in any such action or proceeding shall be effective if such process is given as a notice in accordance with Section 12.6.

Section 12.5 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT, THE PARTIES' RELATIONSHIP HEREUNDER OR SERVICES PROVIDED UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES' RELATIONSHIP HEREUNDER OR SERVICES PROVIDED UNDER THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANOTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE.

Section 12.6 Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by electronic or digital transmission method; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case, notice will be sent to:

If to Post:

Post Holdings, Inc.
2503 S. Hanley Road
St. Louis, MO 63144
Attention: General Counsel
E-mail:

If to BellRing Inc. or BellRing LLC:

BellRing Brands, LLC
2503 S. Hanley Rd.
St. Louis, MO 63144
Attention: General Counsel
E-mail:

or to such other address(es) as shall be furnished in writing by any such party to the other party in accordance with the provisions of this Section 12.6.

Section 12.7 Successors and Assigns; Benefit.

(a) No assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other parties hereto and any attempted assignment without the required consent shall be void; provided, however, that any party may assign, in whole or in part, this Agreement and its rights and obligations hereunder without notice or the prior written consent of the other party to any Affiliate of such party provided the assigning party shall remain liable hereunder following any such assignment.

(b) This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein express or implied shall give or be construed to give to any Person, other than the parties hereto and such permitted assigns, any legal or equitable rights hereunder. Nothing herein shall or shall be deemed to amend any benefit plan of any the parties hereto.

Section 12.8 Entire Agreement; Amendments; Waiver.

(a) This Agreement, the Exhibits to this Agreement and the Transaction Agreement contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and, except to the extent specifically set forth herein, supersede all prior agreements and understandings relating to such subject matter. In the event of any conflict between this Agreement and the Exhibits to this Agreement, this Agreement shall control.

(b) No amendment, supplement, modification or cancellation of this Agreement shall be effective unless it shall be in writing and signed by each party hereto. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by such party, granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

(c) During the term of this Agreement, there may be a Change in Circumstance (as defined below) that may require Service Provider, in its discretion, to modify, amend or change the Services provided hereunder. Notwithstanding anything to the contrary in this Agreement, in the event of a Change in Circumstance during the term of this Agreement, without the consent of Recipient, Service Provider may amend the given Services Schedule of this Agreement upon written notice to Recipient to the extent necessary to comply with such Change in Circumstance. Without limiting the foregoing, if the Change in Circumstance results in additional costs to Service Provider for providing the Services hereunder, then Service Provider may increase the fees and costs set forth on the applicable Services Schedule in amounts as will compensate Service Provider for such additional costs; provided, however, that such additional costs are borne on a *pro rata* basis by each of Recipient and Service Provider and its Affiliates receiving or utilizing such services, as applicable, to the extent such Change in Circumstance affects the provision of such services by Service Provider to itself or to such Affiliates, including Recipient. Any amendment made in accordance with this Section 12.8(c) shall be effective as of the date specified in the notice of such amendment. "Change in Circumstance" shall mean any change in any Law, whether by adoption of a new Law, the amendment, modification, expiration or repeal of an existing Law or the reversal of a Law by a Governmental Authority.

Section 12.9 Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by Law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 12.10 Counterparts; Electronic Delivery. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic mail, and an electronic copy of this Agreement or of a signature of a party shall be effective as an original.

Section 12.11 Other Agreements. This Agreement is not intended to amend or modify, and should not be interpreted to amend or modify in any respect, the rights and obligations of the parties under the Transaction Agreement or any of the Ancillary Agreements.

Section 12.12 Specific Performance. The parties hereto agree that irreparable damage could occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled, without posting a bond or similar indemnity, to an injunction or injunctions to prevent breaches of this Agreement or to specific enforcement of the performance of the terms and provisions hereof.

Section 12.13 No Right of Setoff. Each of the parties hereto hereby acknowledges that it shall have no right under this Agreement to offset any amounts owed (or to become due and owing) to the other party(ies) under this Agreement against any other amount owed (or to become due and owing) to it by the other party(ies).

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

POST:

Post Holdings, Inc.

By: /s/ Diedre J. Gray

Name: Diedre J. Gray

Title: Executive Vice President, General Counsel and
Chief Administrative Officer, Secretary

BELLRING INC.:

BellRing Brands, Inc.

By: /s/ Darcy Horn Davenport

Name: Darcy Horn Davenport

Title: President and Chief Executive Officer

BELLRING LLC:

BellRing Brands, LLC

By: /s/ Darcy Horn Davenport

Name: Darcy Horn Davenport

Title: President and Chief Executive Officer

[SIGNATURE PAGE TO MASTER SERVICES AGREEMENT]

FORM OF

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is made and entered into as of _____, 2019, by and among BellRing Brands, Inc., a Delaware corporation (the "Company"), and _____ ("Indemnitee"). Capitalized terms used but not otherwise defined herein shall have the meanings set forth in Section 15 hereof.

WHEREAS, in light of the litigation costs and risks to directors, managers and officers resulting from their service to companies, and the desire of the Company to attract and retain qualified individuals to serve as directors, managers and officers for the Company Entities, it is reasonable, prudent and necessary for the Company to indemnify and advance expenses on behalf of the Company Entities' directors, managers and officers to the extent permitted by applicable Law so that they will serve or continue to serve the Company Entities free from undue concern regarding such risks;

WHEREAS, the Company has requested that Indemnitee serve or continue to serve as a director and/or officer of the Company and may have requested or may in the future request that Indemnitee serve one or more of the other Company Entities as a director, manager or officer or in other capacities; and

WHEREAS, Indemnitee is willing to serve as a director and/or officer of the Company on the condition that Indemnitee be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and/or one or more of the Company Entities.
2. Indemnification.

(a) General. On the terms and subject to the conditions of this Agreement, the Company shall, to the fullest extent permitted by applicable law (as such may be in existence on the date hereof or amended from time to time, "Law"), indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, all liabilities, judgments, fines, penalties, costs, Expenses and other amounts that Indemnitee reasonably incurs and that result from, arise in connection with or are by reason of Indemnitee's Corporate Status, and shall advance Expenses to Indemnitee pursuant to the terms set forth in this Agreement. The obligations of the Company under this Agreement shall continue during the period Indemnitee is a director or officer of any Company Entity and after such time as Indemnitee ceases to serve as a director or officer of any Company Entity or in any other Corporate Status, and include, without limitation, claims for monetary damages against Indemnitee in respect of any actual or alleged liability or other loss of Indemnitee, to the fullest extent permitted under applicable Law (including, if applicable, Section 145 of the General Corporation Law of the State of Delaware).

(b) Indemnity of Indemnitee by Subsidiary of the Company. Notwithstanding and in addition to any other provision of this Agreement, in the event that Indemnitee serves, now or in the future, as an officer, director, member of the board of managers or in a similar position with any of the Company's direct or indirect subsidiaries, in consideration for such service, Indemnitee shall be indemnified and be entitled to rights of advancement and contribution from any such subsidiary to the maximum extent permitted by this Agreement and by applicable Law. Such indemnification, advancement and contribution shall be made on comparable terms pursuant to comparable procedures as those set forth in this Agreement. The Company hereby represents that it is or will be duly authorized and empowered on behalf of each such subsidiary described in the preceding sentence to provide such indemnification, advancement and contribution as set forth in this Section 2(b) and further agrees to take any and all

actions necessary to cause each such subsidiary to effectuate such indemnification, advancement and contribution. In the event that any such subsidiary against which Indemnitee is entitled to such indemnification, advancement and contribution fails to provide such indemnification, advancement or contribution to the maximum extent permitted by this Agreement and by applicable Law, the Company agrees to provide to Indemnitee any and all indemnification, advancement and contribution to the maximum extent permitted by this Agreement and by applicable Law on behalf of such subsidiary. The rights of indemnification, advancement and contribution provided to Indemnitee by any subsidiary of the Company are not exclusive of any other rights which Indemnitee may have from such subsidiary under statute, bylaw, agreement, vote of the board of directors or board of managers of such subsidiary or otherwise.

3. Proceedings Other Than Proceedings by or in the Right of the Company. If in connection with, or by reason of, Indemnitee's Corporate Status Indemnitee was, is, or is threatened to be made, a party to or a participant in any Proceeding other than a Proceeding by or in the right of the Company to procure a judgment in its favor, the Company shall, to the fullest extent permitted by Law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, all Expenses, liabilities, losses, judgments, fines, penalties, costs and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such liabilities, losses, judgments, fines, penalties, costs and amounts paid in settlement) reasonably incurred by Indemnitee or on behalf of Indemnitee in connection with such Proceeding or any claim, issue or matter therein.

4. Proceedings by or in the Right of the Company. If in connection with, or by reason of, Indemnitee's Corporate Status Indemnitee was, is, or is threatened to be made, a party to or a participant in any Proceeding brought by or in the right of the Company to procure a judgment in its favor, the Company shall, to the fullest extent permitted by Law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, all Expenses reasonably incurred by Indemnitee or on behalf of Indemnitee in connection with such Proceeding; provided, however, that indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the Company only if (and only to the extent that) the Court of Chancery of the State of Delaware or other court in which such Proceeding shall have been brought or is pending (the "Trial Court") shall determine that despite such adjudication of liability and in light of all circumstances such indemnification may be made.

5. Mandatory Indemnification in Case of Successful Defense. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding (including, without limitation, any Proceeding brought by or in the right of the Company), the Company shall, to the fullest extent permitted by Law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, all Expenses reasonably incurred by Indemnitee or on behalf of Indemnitee in connection therewith. If Indemnitee is not wholly successful in defense of such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by Law, indemnify Indemnitee against all Expenses reasonably incurred by Indemnitee or on behalf of Indemnitee in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, on substantive or procedural grounds, shall be deemed to be a successful result as to such claim, issue or matter.

6. Partial Indemnification; Contribution.

(a) Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement or otherwise to indemnification by the Company for a portion of the Expenses, liabilities, losses, judgments, fines, penalties, costs and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such liabilities, losses, judgments, penalties, fines and amounts paid in settlement) incurred by Indemnitee or on behalf of Indemnitee in connection with a Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by Law, indemnify Indemnitee to the fullest extent to which Indemnitee is entitled to such indemnification.

(b) Contribution.

(i) Whether or not any indemnification provided elsewhere in this Agreement is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee.

(ii) Without diminishing or impairing the obligations of the Company set forth in the preceding subsection, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses (including reasonable outside attorneys' fees), liabilities, losses, judgments, fines, penalties, costs and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to Law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such Expenses, liabilities, losses, judgments, fines, penalties, costs or settlement amounts, as well as any other equitable considerations that the applicable Law of the State of Delaware (or other applicable Law) may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(iii) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution that may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(iv) To the fullest extent permissible under applicable Law and without diminishing or impairing the obligations of the Company set forth in the preceding subsections of this Section 6, if the indemnification obligations of the Company provided for in this Agreement are unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee,

shall contribute to the amount incurred by Indemnitee, whether for liabilities, losses, judgments, fines, penalties, costs, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (A) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (B) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

7. Indemnification for Additional Expenses Incurred to Secure Recovery or as Witness.

(a) The Company shall, to the fullest extent permitted by Law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, any and all Expenses and, if requested by Indemnitee, shall advance on an as-incurred basis (as provided in Section 9 of this Agreement) such Expenses to Indemnitee, which are reasonably incurred by Indemnitee in connection with any action or proceeding or part thereof brought by Indemnitee for (i) indemnification or advance payment of Expenses by the Company under this Agreement, any other agreement or the Organizational Documents of the Company as now or hereafter in effect; or (ii) recovery under any director and officer liability insurance policies maintained by any Company Entity.

(b) To the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness (or is forced or asked to respond to discovery requests) in any Proceeding to which Indemnitee is not a party, the Company shall, to the fullest extent permitted by Law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, and the Company will advance on an as-incurred basis (as provided in Section 9 of this Agreement), all Expenses reasonably incurred by Indemnitee or on behalf of Indemnitee in connection therewith.

8. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for elsewhere in this Agreement, the Company shall and hereby does, to the fullest extent permitted by Law, indemnify Indemnitee with respect to, and hold Indemnitee harmless from and against, all Expenses, liabilities, losses, judgments, fines, penalties, costs and amounts paid in settlement (other than amounts paid in settlement with respect to a Proceeding by or in the right of the Company) reasonably incurred by Indemnitee or on behalf of Indemnitee, if, by reason of Indemnitee's Corporate Status, Indemnitee was, is, or is threatened to be made, a party to or a participant in any Proceeding (including a Proceeding by or in the right of the Company), including to the fullest extent permitted by Law, without limitation, all liability arising out of the ordinary negligence of Indemnitee (other than the fraud of Indemnitee). The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee if a court of competent jurisdiction issues a final non-appealable judicial determination that Indemnitee is not entitled to indemnification hereunder.

9. Advancement of Expenses. The Company shall, to the fullest extent permitted by Law, pay on a current and as-incurred basis all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding in any way connected with, resulting from or relating to Indemnitee's Corporate Status. Such Expenses shall be paid in advance of the final disposition of such Proceeding, without regard to whether Indemnitee will ultimately be entitled to be indemnified for such Expenses and without regard to whether an Adverse Determination has been or may be made, except as contemplated by Section 10(f) of this Agreement. Following a final disposition of such Proceeding, if any, Indemnitee shall repay such amounts advanced only if and to the extent that an Adverse Determination is made and not challenged, as provided in Section 10(f), or if it shall ultimately be determined in a decision by a court of competent jurisdiction from which no appeal can be taken that Indemnitee is not entitled to be indemnified by the Company for such Expenses.

10. Indemnification Procedures.

(a) Notice of Proceeding. Indemnatee agrees to notify the Company promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter that may be subject to indemnification or advancement of Expenses hereunder. Any failure by Indemnatee to notify the Company will relieve the Company of its advancement or indemnification obligations under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual and material prejudice to it, and the omission to notify the Company will, in any event, not relieve the Company from any liability that it may have to indemnify Indemnatee otherwise under this Agreement.

(b) Defense; Settlement. The Company shall have the sole right and obligation to control the defense or conduct of any claim or Proceeding with respect to Indemnatee. The Company shall not, without the prior written consent of Indemnatee, which may not be unreasonably withheld, conditioned or delayed, effect any settlement or compromise of any Proceeding against Indemnatee which imposes any cost or liability on Indemnatee unless such settlement or compromise solely involves the payment of money for which the Indemnatee will be fully indemnified or performance of any obligation by persons other than Indemnatee. The Company shall not be obligated to indemnify Indemnatee against amounts paid in settlement of a Proceeding against Indemnatee if such settlement is effected by Indemnatee without the Company's prior written consent.

(c) Request for Advancement; Request for Indemnification.

(i) To obtain advancement of Expenses under this Agreement, Indemnatee shall submit to the Company a written request therefor, together with such invoices or other supporting information as may be reasonably requested by the Company and reasonably available to Indemnatee, and, only to the extent required by applicable Law and/or any applicable Organizational Documents that cannot be waived, an unsecured written undertaking to repay amounts advanced unless it shall ultimately be determined that he or she is entitled to be indemnified by the Company. The Company shall make advance payment of Expenses to Indemnatee no later than 15 days after receipt of the written request for advancement (and each subsequent request for advancement) by Indemnatee.

(ii) To obtain indemnification under this Agreement, at any time after submission of a request for advancement of Expenses pursuant to Section 10(c)(i) of this Agreement, Indemnatee may submit a written request for indemnification hereunder. The time at which Indemnatee submits a written request for indemnification shall be determined by the Indemnatee in the Indemnatee's sole discretion. Once Indemnatee submits such a written request for indemnification (and only at such time that Indemnatee submits such a written request for indemnification), a Determination shall thereafter be made, as provided in and only to the extent required by Section 10(d) of this Agreement. In no event shall a Determination be made, or required to be made, as a condition to or otherwise in connection with any advancement of Expenses pursuant to Section 9 and Section 10(c)(i) of this Agreement. Notwithstanding the foregoing, any failure of Indemnatee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnatee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(d) Determination. The Company agrees that in no event shall a Determination be required in connection with indemnification for Expenses incurred as a witness pursuant to Section 7 of this Agreement or incurred in connection with any Proceeding or portion thereof with respect to which Indemnatee has been successful on the merits or otherwise unless specifically required by applicable Law that cannot be waived. Any decision that a Determination is required by Law in connection with any such indemnification of Indemnatee, and any Determination required in connection therewith or with any other

indemnification of Indemnitee, shall be made within 30 days after the later of (i) receipt of Indemnitee's written request for indemnification pursuant to Section 10(c)(ii), or (ii) the selection of Independent Counsel, if such Determination is to be made by Independent Counsel (the "Determination Period") and such Determination shall be made either (A) by the Board of Directors by majority vote or consent of a quorum consisting of only Disinterested Directors, or (B) if such a quorum of Disinterested Directors cannot be obtained, by Independent Counsel in a written opinion to the Company and Indemnitee. If a Determination is requested but is not made during the Determination Period, then the requisite Determination shall be deemed a Favorable Determination and Indemnitee shall be entitled to such indemnification absent (x) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (y) a prohibition of such indemnification under applicable Law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional 15 days, if the person, persons or entity making such Determination in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto. If a Determination is made that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 20 days after such Determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such Determination, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such Determination. Any Independent Counsel or Disinterested Directors, as the case may be, shall act reasonably and in good faith in making a Determination under this Agreement. Any Expenses incurred by Indemnitee in so cooperating with the Disinterested Directors or Independent Counsel, as the case may be, making such Determination shall be advanced and borne by the Company (irrespective of the Determination as to Indemnitee's entitlement to indemnification) and the Company is liable to indemnify and hold Indemnitee harmless therefrom. Notwithstanding anything in this Agreement to the contrary, no Determination shall be required to be made prior to the final disposition of the Proceeding.

(e) Independent Counsel. In the event that the Determination is to be made by Independent Counsel pursuant to Section 10(d) of this Agreement, the Independent Counsel shall be selected as provided in this Section 10(e). The Independent Counsel shall be selected by the Disinterested Directors (unless there are no Disinterested Directors, in which case Indemnitee shall select the Independent Counsel in the Indemnitee's sole discretion), and the Board of Directors or the Indemnitee, as the case may be, shall give written notice to the other, advising the Board of Directors or Indemnitee, as the case may be, of the identity of the Independent Counsel so selected. The Board of Directors or the Indemnitee, as the case may be, may, within 10 days after such written notice of selection shall have been received, deliver to the Indemnitee or the Board of Directors, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 10(c)(ii) of this Agreement, no Independent Counsel shall have been selected and not objected to, either the Board of Directors or Indemnitee may petition a court of competent jurisdiction for resolution of any objection that shall have been made by the Board of Directors or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(d) of this Agreement. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 10(f) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing). Any expenses incurred by Independent Counsel shall be borne by the Company (irrespective of the Determination of Indemnitee's entitlement to indemnification) and not by Indemnitee.

(f) Consequences of Determination; Remedies of Indemnitee. The Company shall be bound by and shall have no right to challenge a Favorable Determination. If an Adverse Determination is made, or if for any other reason the Company does not make timely indemnification payments or advances of Expenses, or the Company or any other person takes any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided hereunder, Indemnitee shall have the right to commence a Proceeding before a court of competent jurisdiction to challenge such Adverse Determination, and/or to require the Company to make such payments or advances, and/or to recover damages for breach of this Agreement, and/or to recover under any directors' and officers' liability insurance policies maintained by the Company (and the Company shall have the right to defend its position in such Proceeding and to appeal any adverse judgment in such Proceeding but shall not oppose Indemnitee's right to seek such adjudication). Indemnitee shall be entitled to be indemnified for all Expenses incurred in connection with such a Proceeding and to have such Expenses advanced by the Company in accordance with Section 9 of this Agreement, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery. The Company shall not oppose Indemnitee's right to seek any such adjudication. If Indemnitee fails to challenge an Adverse Determination, or if Indemnitee challenges an Adverse Determination and such Adverse Determination has been upheld by a final judgment of a court of competent jurisdiction from which no appeal can be taken, then, to the extent and only to the extent required by such Adverse Determination or final judgment, the Company shall not be obligated to indemnify or advance Expenses to Indemnitee under this Agreement. In the event that an Adverse Determination has been made, any judicial proceeding commenced pursuant to this Section 10(f) shall be conducted in all respects as a *de novo* trial on the merits, and Indemnitee shall not be prejudiced by reason of the Adverse Determination. The Company authorizes the Indemnitee from time to time to retain one counsel of Indemnitee's choice reasonably acceptable to the Board of Directors, at the expense of the Company to the extent provided under applicable Law, to advise and represent Indemnitee in connection with any such judicial adjudication or recovery, including without limitation, the initiation or defense of any litigation or other legal action, whether by or against the Company or any director, officer, stockholder or other person affiliated with the Company; provided that Indemnitee shall have reasonably concluded based on written advice of independent counsel that there is a conflict of interest between the Company and Indemnitee with respect to any judicial action. The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable.

(g) Presumptions; Burden and Standard of Proof. The parties intend and agree that, to the extent permitted by Law, in connection with any Determination with respect to Indemnitee's entitlement to indemnification hereunder by any person, including a court:

(i) it will be presumed that Indemnitee is entitled to indemnification under this Agreement, and (A) the Company Entities or any other person or entity challenging such right will have the burden of proof and the burden of persuasion by clear and convincing evidence to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption, and (B) neither the failure of the Company (including by its directors or Independent Counsel) to have made a Determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual Determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has not met the applicable standard of conduct;

(ii) a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty, and therefore in the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding, and anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence;

(iii) the termination of any action, suit or Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create an unfavorable presumption against Indemnitee; and

(iv) Indemnitee will be deemed to have acted reasonably if Indemnitee's action is based on the records or books of account of the applicable Company Entity, including financial statements, or on information supplied to Indemnitee by the officers, employees or committees of the board of directors (or equivalent governing body) of the applicable Company Entity, or on the advice of legal counsel for the applicable Company Entity or on information or records given in reports made to the applicable Company Entity by an independent certified public accountant or by an appraiser or other expert or advisor selected with reasonable care by the applicable Company Entity.

The provisions of this Section 10(g) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement. In addition, whether or not the foregoing provisions of this Section 10(g) are satisfied, it shall in no event create any unfavorable presumption with respect to Indemnitee's actions. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

11. Insurance; Subrogation; Other Rights of Recovery, etc.

(a) The Company may purchase and maintain a policy or policies of insurance with reputable insurance companies, providing Indemnitee with coverage for any liability asserted against, and incurred by, Indemnitee or on Indemnitee's behalf by reason of Indemnitee's Corporate Status, or arising out of Indemnitee's status as such, whether or not any the Company would have the power to indemnify Indemnitee against such liability. With respect to the Company, such insurance policies shall have coverage terms and policy limits at least as favorable to Indemnitee as the insurance coverage provided to any other director or officer of such Company Entity.

(b) In the event of any payment by the Company under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee against any other Company Entity, and Indemnitee hereby agrees, as a condition to obtaining any advancement or indemnification from the Company, to assign to the Company all of Indemnitee's rights to obtain from such other Company Entity such amounts to the extent that they have been paid by the Company to or for the benefit of Indemnitee as advancement or indemnification under this Agreement and are adequate to indemnify Indemnitee with respect to the costs, Expenses or other items to the full extent that Indemnitee is entitled to indemnification or other payment hereunder; and Indemnitee will (upon request by the Company) execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit or enforce such rights.

(c) Except as provided in this Section 11(c), the Company shall not be liable to pay or advance to Indemnitee any amounts otherwise indemnifiable under this Agreement or under any other indemnification agreement if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise; provided, however, that: (i) the Company hereby agrees that it is the indemnitor of first resort under this Agreement and under any other indemnification agreement (i.e., its obligations to Indemnitee under this Agreement or any other agreement or undertaking to provide advancement and/or indemnification to Indemnitee are primary and any obligation of Post (or any affiliate thereof other than a Company Entity) to provide advancement or indemnification for the same Expenses, liabilities, losses, judgments, fines, penalties, costs and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, liabilities, losses, judgments, fines, penalties, costs and amounts paid in settlement) incurred by Indemnitee, whether pursuant to contract or Organizational Documents or otherwise, are secondary); (ii) the Company hereby agrees that, subject to the other terms and conditions of this Agreement, it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, losses, liabilities, judgments, fines, penalties, costs and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and/or the Organizational Documents of the Company (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against Post or any affiliate thereof (other than a Company Entity); and (iii) if Post (or any affiliate thereof other than a Company Entity) pays or causes to be paid, for any reason, any amounts otherwise indemnifiable hereunder or under any other indemnification agreement (whether pursuant to contract or Organizational Documents) with Indemnitee, then (x) Post (or such affiliate, as the case may be) shall have a right to contribution and/or be fully subrogated to all rights of Indemnitee with respect to such payment and (y) the Company shall fully indemnify, reimburse and hold harmless Post (or such affiliate) for all such payments actually made by Post (or such affiliate).

(d) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee in respect of or relating to Indemnitee's service at the request of the Company as a director, officer, employee, fiduciary, representative, partner or agent of any other Company Entity shall be reduced by any amount Indemnitee has actually received as payment of indemnification or advancement of Expenses from such other Company Entity, except to the extent that such indemnification payments and advance payment of Expenses when taken together with any such amount actually received from other Company Entities or under director and officer insurance policies maintained by one or more Company Entities are inadequate to fully pay all costs, Expenses or other items to the full extent that Indemnitee is otherwise entitled to indemnification or other payment hereunder.

(e) Except for the rights set forth in Sections 11(c) and 11(d) of this Agreement, the rights to indemnification and advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time, whenever conferred or arising, be entitled under applicable Law, under the Company Entities' Organizational Documents or under any other agreement, vote of stockholders or resolution of directors or managers of any Company Entity, or otherwise, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. Indemnitee's rights under this Agreement are present contractual rights that fully vest upon Indemnitee's first service as a director or officer of the Company.

(f) No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the applicable Laws of the State of Delaware (or other applicable Law), whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be

afforded currently under the Company Entities' Organizational Documents and this Agreement, it is the intent of the parties hereto that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

12. Employment Rights; Successors; Third Party Beneficiaries.

(a) This Agreement shall not be deemed an employment contract between the Company and Indemnitee. This Agreement shall continue in force as provided above after Indemnitee has ceased to serve as a director and/or officer of the Company or any other Corporate Status.

(b) This Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators.

(c) Post and its affiliates are express third party beneficiaries of this Agreement, are entitled to rely upon this Agreement and may specifically enforce the Company's obligations specified in Section 11(c) of this Agreement as though a party hereunder.

13. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable Law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable Law. In the event any provision hereof conflicts with any applicable Law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any other provision of this Agreement and except as provided in Section 7(a) of this Agreement or as may otherwise be agreed by the Company, Indemnitee shall not be entitled to indemnification or advancement of Expenses under this Agreement with respect to (i) any Proceeding brought by Indemnitee (other than a Proceeding by Indemnitee (x) by way of defense or counterclaim, unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous, (y) to enforce Indemnitee's rights under this Agreement or (z) to enforce any other rights of Indemnitee to indemnification, advancement or contribution from the Company under any other contract, Organizational Documents or under statute or other Law, including any rights under Section 145 of the General Corporation Law of the State of Delaware), unless the bringing of such Proceeding or making of such claim shall have been approved by the Board of Directors, (ii) any Proceeding in which a final non-appealable decision by a court of competent jurisdiction determines that such indemnification is prohibited by applicable Law, or (iii) the disgorgement of profits arising from the purchase or sale by Indemnitee of securities of the Company in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

15. Definitions. For purposes of this Agreement:

(a) “Company Entity” means (i) the Company, (ii) any of its direct or indirect subsidiaries and (iii) any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise with respect to which Indemnitee serves as a director, officer, employee, partner, representative, fiduciary or agent, or in any similar capacity, at the request of the Company.

(b) “Board of Directors” means the board of directors of the Company.

(c) “Corporate Status” describes the status of a person by reason of such person’s past, present or future service as a director or officer of the Company or any of its direct or indirect subsidiaries or by reason of such person’s past, present or future service, at the request of the Company, as a director, manager, officer, employee, fiduciary or agent of any other Company Entity.

(d) “Determination” means a determination that either (x) there is a reasonable basis for the conclusion that indemnification of Indemnitee is proper in the circumstances because Indemnitee met a particular standard of conduct that is a required condition to indemnification of Indemnitee hereunder (a “Favorable Determination”) or (y) there is no reasonable basis for the conclusion that indemnification of Indemnitee is proper in the circumstances because Indemnitee met a particular standard of conduct that is a required condition to indemnification of Indemnitee hereunder (an “Adverse Determination”). An Adverse Determination shall include the decision that a Determination was required in connection with indemnification and the decision as to the applicable standard of conduct.

(e) “Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(f) “Expenses” shall mean all reasonable direct and indirect costs, fees and expenses of any type or nature whatsoever and shall specifically include, without limitation, all reasonable outside attorneys’ fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding, including, but not limited to, the premium for appeal bonds, attachment bonds or similar bonds and all interest, assessments and other charges paid or payable in connection with or in respect of any such Expenses, and shall also specifically include, without limitation, all reasonable outside attorneys’ fees and all other expenses incurred by or on behalf of Indemnitee in connection with preparing and submitting any requests or statements for indemnification, advancement, contribution or any other right provided by this Agreement. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amounts of judgments or fines against Indemnitee.

(g) “Independent Counsel” means, at any time, any law firm, or a member of a law firm, that (a) is experienced in matters of corporation law and (b) is not, at such time, or has not been in the five years prior to such time, retained to represent: (i) any Company Entity or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnities under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto and to be liable therefor.

(h) “Organizational Documents” means an entity’s charter, bylaws, partnership agreement, limited liability company agreement, operating agreement, indemnification agreement or other similar or equivalent agreement or document.

(i) “Post” means Post Holdings, Inc., a Missouri corporation.

(j) “Proceeding” includes any actual, threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened, pending or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative in nature, in which Indemnitee was, is, may be or will be involved as a party, witness or otherwise, by reason of Indemnitee’s Corporate Status or by reason of any action taken by Indemnitee or of any inaction on Indemnitee’s part while acting as director or officer (or equivalent position) of any Company Entity (in each case whether or not Indemnitee is acting or serving in any such capacity or has such status at the time any liability or expense is incurred for which indemnification or advancement of Expenses can be provided under this Agreement), including any pending on or before the date of this Agreement, but excluding any initiated by an Indemnitee pursuant to Section 10(f) of this Agreement to enforce Indemnitee’s rights under this Agreement.

(k) Construction. Whenever required by the context, as used in this Agreement the singular number shall include the plural, the plural shall include the singular and all words herein in any gender shall be deemed to include (as appropriate) the masculine, feminine and neuter genders.

16. Reliance; Integration.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director and/or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director and/or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

17. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in a writing identified as such by each of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

18. Notice. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (i) upon receipt if delivered personally, (ii) one Business Day after it is sent by commercial overnight courier service, or (iii) by electronic mail (in which case, it will be effective on the day sent, or, if not a business day, on the immediately following business day) to the parties at the following addresses (or at such other address for a party as shall be specified by such party by like notice):

(a) If to Indemnitee, to:

E-mail:

(b) If to the Company, to:

BellRing Brands, Inc.
2503 S. Hanley Road
St. Louis, MO 63144
Attention: Craig Rosenthal
E-mail:

with a copy (which shall not constitute notice) to:

Lewis Rice LLC
600 Washington Avenue, Suite 2500
St. Louis, MO 63101
Attention: Tom W. Zook
Email:

or to such other address as may have been furnished (in the manner prescribed above) as follows: (a) in the case of a change in address for notices to Indemnatee, furnished by Indemnatee to the Company and (b) in the case of a change in address for notices to the Company, furnished by the Company to Indemnatee.

19. Governing Law; Submission to Jurisdiction; Appointment of Agent for Service of Process. This Agreement and the legal relations among the parties shall, to the fullest extent permitted by Law, be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Court of Chancery of the State of Delaware (the "Designated Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Designated Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Designated Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Designated Court has been brought in an improper or otherwise inconvenient forum.

20. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

21. Counterparts. This Agreement may be executed in two or more consecutive counterparts (including by facsimile), each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by telecopy or otherwise) to the other parties.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Company:

BELLRING BRANDS, INC.

By: _____

Name:

Title:

[SIGNATURE PAGE – INDEMNIFICATION AGREEMENT]

Indemnitee:

Name:

[SIGNATURE PAGE – INDEMNIFICATION AGREEMENT]

BORROWER ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the “Agreement”), dated as of October 21, 2019, is among Post Holdings, Inc., a Missouri corporation, as assignor (“Assignor”), BellRing Brands, LLC, a Delaware limited liability company, as assignee (“Assignee”) and Morgan Stanley Senior Funding, Inc., as administrative agent (in such capacity and together with its successors and assigns, the “Administrative Agent”).

RECITAL

Assignor, the Lenders and the Administrative Agent are parties to that certain Bridge Facility Agreement, dated as of October 11, 2019, (as amended, restated, supplemented or otherwise modified through the date hereof, the “Bridge Facility Agreement”), under which the Lenders have provided bridge loans to the Assignor. In connection with the contribution to the Assignee of certain assets of Assignor, Assignee will become the Borrower under the Bridge Facility Agreement upon the execution and delivery of this Agreement (and satisfaction of the conditions set forth in Section 4.02 (Conditions Precedent to the Debt Assumption) of the Bridge Facility Agreement) to the Administrative Agent.

AGREEMENT

In consideration of the mutual promises and covenants contained in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

SECTION 1. Definitions. Capitalized terms defined in the Bridge Facility Agreement and not defined herein are used herein (including in the Recital hereto) with the meanings so defined.

SECTION 2. Assignment and Assumption. Subject to the satisfaction of the conditions precedent to the Debt Assumption set forth in Section 4.02 (Conditions Precedent to the Debt Assumption) of the Bridge Facility Agreement, including (without limitation) the execution and delivery of this Agreement by the Assignor and the Assignee, effective as of the date hereof (the “Assumption Date”) immediately upon the execution and delivery of this Agreement:

2.1 Assignment and Assumption. Except as otherwise provided in Section 2.5 below, Assignor hereby irrevocably assigns and transfers to Assignee all of Assignor’s rights, title and interests and duties, liabilities and obligations under the Bridge Facility Agreement and the other Loan Documents and Assignee hereby irrevocably and unconditionally accepts such rights, title and interests and assumes such duties, liabilities and obligations from Assignor on the Assumption Date on the terms contained herein, excluding any claims, liabilities or obligations arising from any failure of Assignor to perform any of its covenants, agreements, commitments and/or obligations to be performed by Assignor on or prior to the Closing Date under the Bridge Facility Agreement or any other Loan Document; provided, for the avoidance of doubt, that interest accrued under the Bridge Facility Agreement or any other Loan Document, whether prior to, on, or after the date hereof, shall be the sole obligation of the Assignee. For the avoidance of doubt, fees, costs and expenses (including any indemnification obligations) accruing up to and including the Closing Date shall be paid by the Assignor, and fees, costs and expenses (including any indemnification obligations) accruing after the Closing Date shall be assumed and paid by the Assignee. The Assignee hereby confirms and agrees that the Bridge Facility Agreement and the other Loan Documents are, and shall continue on and after the Assumption Date to be, in full force and effect in accordance with their respective terms and are hereby ratified and confirmed by the Assignee in all respects. If the Assignor makes a payment of principal, interest or fees to a Lender under the Loans on or after the Assumption Date,

Assignee shall become liable to the Assignor for reimbursement of such payment on the same terms under which the Assignee would be liable to the Lenders under the Bridge Facility Agreement; provided that, notwithstanding the foregoing, all rights of the Assignor against the Assignee in respect of such liability and reimbursement shall in all respects be subordinated and junior in right of payment to the prior indefeasible payment in full in cash of all amounts owed by the Assignee to the Lenders under the Bridge Facility Agreement. Without limiting the foregoing, by executing and delivering this Agreement, Assignee hereby (i) becomes a party to the Guarantee and Collateral Agreement as a Grantor (as defined therein) thereunder with the same force and effect as if originally named therein as a Grantor (as defined therein) and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor (as defined therein) thereunder, and (ii) grants to the Administrative Agent, for the benefit of the Secured Parties, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of Assignee's Obligations, a security interest and Lien in all of the Collateral (as defined in the Guarantee and Collateral Agreement) of Assignee, wherever located and now owned or at any time hereafter acquired by Assignee or in which Assignee now has or at any time in the future may acquire any right, title or interest.

2.2 Release of Assignor of Duties, Liabilities and Obligations. Pursuant to Section 9.10(f) and Section 11.06(a)(i) of the Bridge Facility Agreement, the Administrative Agent, on behalf of the Lenders and without recourse or warranty, hereby agrees that, except as provided in Section 2.1 and Section 2.5, the Assignor is released from all duties, liabilities and obligations under the Bridge Facility Agreement and the other Loan Documents.

2.3 Lender's Acceptance of Assignment and Assumption by Assignee. The Administrative Agent, for itself and on behalf of the Lenders, hereby consents to the assignment and assumption set forth in Section 2.1 above, and, except as provided in Section 2.1 and Section 2.5 hereof, accepts the liability of Assignee as Borrower in place of the liability of Assignor as Borrower arising out of or related to the Bridge Facility Agreement or any other Loan Document and grants to Assignee the same rights under or arising out of or related to the Bridge Facility Agreement or any other Loan Document as were granted to Assignor in every way as if Assignee was and had been the Borrower instead of and in place of Assignor.

2.4 Release of Pre-Assumption Guarantors (Other Than the Post-Assumption Guarantors). Pursuant to Section 9.10 of the Bridge Facility Agreement, the Administrative Agent, on behalf of the Lenders and without recourse or warranty, hereby agrees that (x) each Pre-Assumption Guarantor (other than the Post-Assumption Guarantors and other than Assignee) is released from all of its duties, liabilities and obligations under the Guarantee and Collateral Agreement and the other Loan Documents, and (y) the Guarantee of each Pre-Assumption Guarantor (other than the Post-Assumption Guarantors) is hereby terminated.

2.5 Continuing Agreements of the Assignor and Pre-Assumption Guarantors (Other Than the Post-Assumption Guarantors). The provisions set forth in Sections 11.04(d) (waiver of consequential damages), 11.14 (governing law, jurisdiction, etc.), 11.15 (waiver of jury trial) and 11.17 (no advisory or fiduciary responsibility) of the Bridge Facility Agreement will remain agreements of the Assignor and the Pre-Assumption Guarantors (other than the Post-Assumption Guarantors) following the Assumption Date, and each of the above-referenced sections of the Bridge Facility Agreement shall be agreements of Assignee and the Post-Assumption Guarantors following the Assumption Date.

SECTION 3. Representations and Warranties of Assignee and Assignor. Each of Assignee and Assignor, each as to itself only, represents and warrants that:

3.1 Corporate Power and Authority. Such Person has all requisite power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby, and perform its obligations hereunder.

3.2 Due Authorization; No Contravention. The execution, delivery and performance by such Person of this Agreement have been duly authorized by all necessary corporate, limited liability company or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any material contract to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

3.3 Governmental Authorization; Other Consents. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, such Person of this Agreement, except for the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect.

3.4 Binding Effect. This Agreement has been duly executed and delivered by such Person. This Agreement constitutes a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

SECTION 4. Further Representations and Warranties of Assignee. The Assignee represents and warrants to the Administrative Agent and the Lenders as of the date hereof that immediately after giving effect to the assignment and assumption as provided in Section 2 hereof:

4.1 Incorporation of Bridge Facility Agreement Representations and Warranties. The representations and warranties of the Borrower in Article 5 (Representations and Warranties) of the Bridge Facility Agreement are true and correct.

4.2 Absence of Default. No event has occurred and is continuing that would constitute an Event of Default or a Default.

SECTION 5. Further Assurances. The parties hereto agree to execute and deliver such other instruments and documents and to take such other actions as any party hereto may reasonably request in connection with the transactions contemplated by this Agreement.

SECTION 6. Notices. All notices and other communications required to be given or made to Assignee under this Agreement, the Bridge Facility Agreement or any other Loan Document shall be given or made at the address provided in Section 11.02 of the Bridge Facility Agreement.

SECTION 7. General. This Agreement is a Loan Document. This Agreement, the Bridge Facility Agreement and the other Loan Documents constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all current and prior agreements and understandings, whether written or oral, with respect to such subject matter. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any

other term or provision hereof, and any invalid or unenforceable provision shall be modified so as to be enforced to the maximum extent of its validity or enforceability. This Agreement may be executed in any number of counterparts, which together shall constitute one instrument, and shall bind and inure to the benefit of the parties hereto and their respective successors and assigns, including as such successors and assigns all holders of any Obligations. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, e-mailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement is not intended to and shall not confer any rights or remedies upon any Person other than the parties hereto, the Lender and its successors and assigns: provided that neither the Assignor nor the Assignee shall have any right to assign any rights, obligations or liabilities hereunder except in accordance with the terms of the Bridge Facility Agreement. No Person other than the parties hereto, the Lender and its successors and assigns will have or be construed to have any legal or equitable right, remedy or claim under, in respect of, or by virtue of this Agreement. THIS AGREEMENT AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE IN ANY WAY HERETO OR THERETO OR THE NEGOTIATION, EXECUTION OR PERFORMANCE HEREOF OR THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, UNLESS OTHERWISE EXPRESSLY SET FORTH THEREIN, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

ASSIGNOR:

POST HOLDINGS, INC.

By: /s/ Jeff. A Zadoks

Name: Jeff A. Zadoks

Title: Executive Vice President and Chief Financial
Officer

ASSIGNEE:

BELLRING BRANDS, LLC

By: /s/ Paul A. Rhode

Name: Paul A. Rhode

Title: Chief Financial Officer

ADMINISTRATIVE AGENT:

MORGAN STANLEY SENIOR FUNDING, INC., as
Administrative Agent

By: /s/ Ethan Plater

Name: Ethan Plater

Title: Authorized Signatory

CREDIT AGREEMENT

DATED AS OF OCTOBER 21, 2019

AMONG

BELLRING BRANDS, LLC,

AS BORROWER

VARIOUS LENDERS,

CREDIT SUISSE LOAN FUNDING LLC,

BOFA SECURITIES, INC.,

MORGAN STANLEY SENIOR FUNDING, INC.,

BARCLAYS BANK PLC,

CITIBANK, N.A.,

GOLDMAN SACHS BANK USA,

AND

JPMORGAN CHASE BANK, N.A.,

AS JOINT LEAD ARRANGERS AND JOINT BOOKRUNNERS,

BMO CAPITAL MARKETS CORP.,

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH,

NOMURA SECURITIES INTERNATIONAL, INC.,

SUNTRUST ROBINSON HUMPHREY, INC.,

UBS SECURITIES LLC

AND

WELLS FARGO SECURITIES, LLC

AS CO-MANAGERS,

AND

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,

AS ADMINISTRATIVE AGENT

SENIOR SECURED CREDIT FACILITIES

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D	Compliance Certificate
E-1	Assignment and Assumption
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F	Joinder Agreement
G	Guarantee and Collateral Agreement
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CREDIT AGREEMENT

This CREDIT AGREEMENT (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”) is entered into as of October 21, 2019, among BELLRING BRANDS, LLC, a Delaware limited liability company (the “**Borrower**”), each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”), CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent, and each L/C Issuer (as defined below).

WITNESSETH

Whereas, the Borrower has requested that (a) the Term B Lenders extend Term B Loans in an aggregate principal amount of \$700,000,000, (b) the Revolving Credit Lenders provide Revolving Credit Commitments in an aggregate amount of \$200,000,000 and (c) the L/C Issuers agree to issue Letter of Credit in an aggregate amount available to drawn not in excess of the Letter of Credit Sublimit; and

Whereas, the Lenders have indicated their willingness to lend and the L/C Issuers have indicated their willingness to issue letters of credit, in each case, on the terms and subject to the conditions set forth herein.

Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE 1. DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 *Defined Terms.*

As used in this Agreement, the following terms shall have the meanings set forth below:

“**Act**” has the meaning specified in Section 10.19.

“**Active Nutrition Transaction**” means, collectively, the “formation transactions” as described in the Master Transaction Agreement and the Registration Statement, the initial public offering of BRBR pursuant to the Registration Statement, and the transactions relating to any of the foregoing, in each case substantially as described in the Master Transaction Agreement and the Registration Statement.

“**Active Nutrition Business**” has the same meaning as “Post’s Active Nutrition business” as used in the Registration Statement.

“**Additional Refinancing Lender**” has the meaning specified in Section 2.17.

“**Administrative Agent**” means Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Administrative Agent.

“**Affected Foreign Subsidiary**” means any Foreign Subsidiary to the extent such Foreign Subsidiary acting as a Guarantor, or having a Lien granted in its Equity Interests to secure the Obligations or granting a Lien on any of its assets to secure the Obligations would, in any case, cause a Deemed Dividend Problem.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Agency Fee Letter**” means the Administrative Agent Fee Letter, dated September 26, 2019, between the Borrower and the Administrative Agent.

“**Agent Parties**” has the meaning specified in Section 10.02(c).

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” has the meaning specified in the introductory paragraph hereto.

“**Agreement Currency**” has the meaning specified in Section 10.20.

“**Alternative Currency**” means Euros and Pounds Sterling.

“**Annual Financial Statements**” means the most recently delivered audited financial statements required to be delivered pursuant to Section 6.01(a) of this Agreement.

“**Anti-Corruption Laws**” means any laws, rules and regulations of any jurisdiction applicable to the Borrower or any of its Restricted Subsidiaries from time to time concerning or relating to bribery or corruption of public officials, including without limitation the U.S. Foreign Corrupt Practices Act of 1977, as amended.

“**Anti-Terrorism Laws**” has the meaning specified in Section 5.19.

“**Applicable Percentage**” means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the aggregate principal amount of all Commitments and, if applicable and without duplication, Loans of such Lender under the applicable Facility or Facilities at such time; provided that, with respect to any Revolving Credit Facility, if the commitment of each Revolving Credit Lender to make Revolving Credit Loans under such Revolving Credit Facility and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Credit Commitments in respect thereof have expired, then the Applicable Percentage of each Revolving Credit Lender in respect

of such Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender immediately prior to such termination and after giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each of the Term B Facility and the Revolving Credit Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable. The Applicable Percentage of any Lender is subject to adjustment as provided in Section 2.16.

“**Applicable Rate**” means (a) in respect of Term B Loans, 4.00% per annum for Base Rate Loans and 5.00% per annum for Eurodollar Rate Loans and (b), in respect of Original Revolving Credit Loans, (i) from the Closing Date to the date following the Closing Date on which a Compliance Certificate is delivered pursuant to Section 6.02(a) in respect of the first full fiscal quarter ending after the Closing Date, 3.25% per annum for Base Rate Loans and 4.25% per annum for Eurodollar Rate Loans and (ii) thereafter, the applicable percentage per annum set forth below determined by reference to the Secured Net Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

<u>Pricing Level</u>	<u>Secured Net Leverage Ratio</u>	<u>Eurodollar Rate /Letters of Credit</u>	<u>Base Rate</u>
1	> 3.50 to 1.00	4.25%	3.25%
2	< 3.50 to 1.00 and > 2.50 to 1.00	4.00%	3.00%
3	< 2.50 to 1.00	3.75%	2.75%

Any increase or decrease in the Applicable Rate resulting from a change in the Secured Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then Pricing Level 1 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered (and thereafter the Pricing Level otherwise determined in accordance with this definition shall apply).

Furthermore, and notwithstanding anything to the contrary contained in this definition, the Applicable Rate in respect of any Incremental Term Loans, any Refinancing Term Loans or any Other Revolving Commitments (and any Other Revolving Loans thereunder) shall be the applicable percentages per annum set forth in the relevant Joinder Agreement or Refinancing Amendment, as applicable.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

“Applicable Revolving Credit Percentage” means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender’s Applicable Percentages in respect of the Revolving Credit Facilities at such time.

“Applicable Time” means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be reasonably determined by the Administrative Agent or the applicable L/C Issuer to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Appropriate Lender” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class and (b) with respect to Letters of Credit, (i) the relevant L/C Issuer and (ii) the Revolving Credit Lenders.

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

“Arrangers” means Credit Suisse Loan Funding LLC, BofA Securities, Inc., Morgan Stanley Senior Funding, Inc., Barclays Bank PLC, Citibank, N.A., Goldman Sachs Bank USA and JPMorgan Chase Bank, N.A., in their capacities as joint lead arrangers and joint bookrunners.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or any other form approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Auction” has the meaning specified in Section 10.06(b)(vii)(A).

“Availability Period” means, in respect of any Revolving Credit Facility, the period from and including the Closing Date (or the date of the effectiveness of the applicable Revolving Credit Commitments in the case of any Revolving Credit Commitments other than the Original Revolving Credit Commitments) to the earliest of (i) the Maturity Date in respect of such Revolving Credit Facility, (ii) the date of termination of the Revolving Credit Commitments in respect of such Revolving Credit Facility pursuant to Section 2.06 and (iii) the date of termination of the commitment of each Revolving Credit Lender in respect of such Revolving Credit Facility to make Revolving Credit Loans under such Revolving Credit Facility and of the obligation of the L/C Issuers to make L/C Credit Extensions in respect of such Revolving Credit Facility pursuant to Section 8.02.

“Available Amount” means, at any time, an amount equal to, without duplication:

- (a) the sum of:
- (1) an amount, not less than zero, determined on a cumulative basis equal to the Borrower Retained ECF Amount; *plus*
 - (2) the amount of any capital contributions or other proceeds of issuances of Equity Interests (other than Disqualified Equity Interests) received as cash and Cash Equivalents by the Borrower, *plus* the fair market value, as determined in good faith by the Borrower, of marketable securities or other property received by the Borrower as a capital contribution or in return for issuances of Equity Interests (other than Disqualified Equity Interests), in each case, during the period from and including the day immediately following the Closing Date through and including such time; *plus*
 - (3) the aggregate principal amount of any Indebtedness or Disqualified Equity Interests, in each case, of the Borrower and/or any Restricted Subsidiary issued after the Closing Date (other than Indebtedness or Disqualified Equity Interests issued to the Borrower or a Restricted Subsidiary) which has been converted into or exchanged for Equity Interests (other than Disqualified Equity Interests) of the Borrower, together with the fair market value of any Cash Equivalents and the fair market value (as reasonably determined by the Borrower) of any other property or assets received by the Borrower or such Restricted Subsidiary upon such exchange or conversion, in each case, during the period from and including the day immediately following the Closing Date through and including such time; *plus*
 - (4) the net proceeds received by the Borrower or any Restricted Subsidiary during the period from and including the day immediately following the Closing Date through and including such time in connection with the Disposition to a Person (other than the Borrower or any Restricted Subsidiary) of any Investment made pursuant to Section 7.02(o)(2); provided that such amount does not exceed the amount of such Investment made pursuant to Section 7.02(o)(2); *plus*
 - (5) to the extent not already reflected as a return of capital with respect to such Investment for purposes of determining the amount of such Investment, the cash proceeds received by the Borrower and/or any Restricted Subsidiary during the period from and including the day immediately following the Closing Date through and including such time in respect of any Investment made pursuant to Section 7.02(o)(2) (in an amount not to exceed the original amount of such Investment made pursuant to Section 7.02(o)(2)); *plus*

- (6) an amount equal to the sum of (A) the amount of any Investments by the Borrower and/or any Restricted Subsidiary pursuant to Section 7.02(o)(2) in any Unrestricted Subsidiary (in an amount not to exceed the original amount of such Investment made pursuant to Section 7.02(o)(2)) that has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or is liquidated, wound up or dissolved into, the Borrower or any Restricted Subsidiary and (B) the fair market value (as reasonably determined by the Borrower) of the property or assets of any Unrestricted Subsidiary that have been transferred, conveyed or otherwise distributed (in an amount not to exceed the original amount of the Investment in such Unrestricted Subsidiary made pursuant to Section 7.02(o)(2)) to the Borrower and/or any Restricted Subsidiary, in each case, during the period from and including the day immediately following the Closing Date through and including such time; *plus*
- (7) the amount of Declined Proceeds; *minus*

(b) an amount equal to the sum of (1) Investments made pursuant to Section 7.02(o)(2), (2) Restricted Payments made pursuant to Section 7.06(e)(2) or (3) payments, redemptions, purchases, defeasements or other satisfactions of Restricted Indebtedness made pursuant to Section 7.14(d), in each case, made after the Closing Date and prior to such time, or contemporaneously therewith.

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

“Bail-in Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Base Rate” means, with respect to Loans denominated in U.S. Dollars, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus $\frac{1}{2}$ of 1.00% and (c) the Eurodollar Rate that would be payable on such day for a Eurodollar Rate Loan with a one-month Interest Period plus 1.00%.

“Base Rate Loan” means a Revolving Credit Loan or a Term Loan that bears interest based on the Base Rate.

“Benchmark Replacement” means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the LIBO Rate for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the LIBO Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment or method for calculating or determining such spread adjustment, for the replacement of the LIBO Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBO Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to the LIBO Rate:

- (i) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the LIBO Rate permanently or indefinitely ceases to provide the LIBO Rate; or
- (ii) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the LIBO Rate:

- (1) a public statement or publication of information by or on behalf of the administrator of the LIBO Rate announcing that such administrator has ceased or will cease to provide the LIBO Rate, permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Rate;
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBO Rate, a resolution authority with jurisdiction over the administrator for the LIBO Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBO Rate, which states that the administrator of the LIBO Rate has ceased or will cease to provide the LIBO Rate permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Rate; or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Rate announcing that the LIBO Rate is no longer representative.

“Benchmark Transition Start Date” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

“Benchmark Unavailability Period” means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the LIBO Rate and solely to the extent that the LIBO Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder in accordance with Section 3.08 and (y) ending at the time that a Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder pursuant to Section 3.08.

“Beneficial Owner” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as such term is used in Section 13(d)(3) of the Exchange Act), such “person” shall be deemed to have beneficial ownership of all securities that such “person” has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in [Section 6.02](#).

“Borrower Operating Agreement” means that certain Amended and Restated Limited Liability Company Agreement of the Borrower by and among BRBR, Post and the Borrower, dated as of October 21, 2019, as the same may be amended, modified, supplemented, restated or replaced from time to time.

“Borrower Retained ECF Amount” means, as at any date of determination, an amount equal to the Borrower Retained ECF Percentage of the Consolidated Excess Cash Flow of the Borrower for each Fiscal Year beginning with the Fiscal Year commencing October 1, 2019 through and including the last day of the most recently completed Fiscal Year with respect to which the Administrative Agent has received the Compliance Certificate required to be delivered pursuant to [Section 6.02\(a\)](#).

“Borrower Retained ECF Percentage” means, for any given Fiscal Year, 25%; provided that if, as of the last day of such Fiscal Year, the Secured Net Leverage Ratio is less than or equal to 3.35:1.00, the Borrower Retained ECF Percentage shall be 50%.

“Borrowing” means a Term B Borrowing, a Revolving Credit Borrowing of a particular Class, a Refinancing Term Loan Borrowing or an Incremental Borrowing, as the context may require.

“BRBR” means BellRing Brands, Inc., a Delaware corporation

“Bridge Facility Agreement” means the Bridge Facility Agreement, among the Borrower (as assignee of Post) the parties from time to time party thereto as lenders and Morgan Stanley Senior Funding, Inc., as administrative agent, dated October 11, 2019.

“Bridge Loan” means the third party debt for borrowed money of the Borrower under the Bridge Facility Agreement.

“Bridge Loan Repayment” means the repayment in full of the Bridge Loan and the termination of all commitments thereunder.

“Business Day” means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (b) with respect to all notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Rate Loans, means any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in U.S. Dollar deposits in the London interbank market

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition or maintenance of any fixed or capital asset, in each case, that are capitalized in accordance with GAAP.

“Capital Lease” means, with respect to any Person, any lease that is required by GAAP to be capitalized on a balance sheet of such Person.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent or any L/C Issuer (as applicable) and the Lenders, as collateral for L/C Obligations or obligations of Lenders to fund participations in respect thereof (as the context may require), cash or deposit account balances or, if the applicable L/C Issuer benefiting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the applicable L/C Issuer. **“Cash Collateral”** shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Restricted Subsidiaries free and clear of all Liens (other than Liens created under the Collateral Documents and other Liens permitted hereunder):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America or Canada, any state or province thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 365 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and maturing no more than 365 days from the time of the acquisition thereof, and having, at the time of acquisition thereof, a rating of A-1 (or the then equivalent grade) or better from S&P or P-1 (or the then equivalent grade) or better from Moody's;

(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition; and

(e) solely with respect to Foreign Subsidiaries, investments of the types and maturities described in clauses (a) through (d) above issued, where relevant, by any commercial bank of recognized international standing chartered in the country where such Foreign Subsidiary is domiciled having unimpaired capital and surplus of at least \$500,000,000.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, card services (including services related to credit cards, including purchasing and commercial cards, prepaid cards, including payroll, stored value and gift cards, merchant services processing and debit cards), electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, (a) at the time it enters into a Cash Management Agreement with any Loan Party, is a Lender, the Administrative Agent or an Arranger or an Affiliate of a Lender, the Administrative Agent or an Arranger, in its capacity as a party to such Cash Management Agreement, and (b) in the case of any Cash Management Agreement entered into prior to, and existing on, the Closing Date, any Person that is, on the Closing Date, a Lender, the Administrative Agent or an Arranger or Affiliate of a Lender, the Administrative Agent or an Arranger, in its capacity as a party to such Cash Management Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and any rules or regulations promulgated thereunder.

"CFC" means a Subsidiary of the Borrower that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated

by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“**Change of Control**” means the occurrence of any of the following:

(a) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Borrower and its Subsidiaries taken as a whole to any “person” (as such term is used in Section 13(d)(3) of the Exchange Act) other than a Permitted Holder;

(b) the adoption of a plan relating to the liquidation or dissolution of the Borrower; or

(c) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” (as defined above) other than a Permitted Holder becomes the Beneficial Owner, directly or indirectly, of 50% or more of the Voting Stock of the Borrower, measured by voting power rather than number of shares; provided, however, that an entity (other than BRBR) that conducts no other material activities other than holding Equity Interests in the Borrower or any direct or indirect parent of the Borrower and has no other material assets or liabilities other than such Equity Interests will not itself be considered a “person” for purposes of this clause (c), unless a change in such entity’s ownership would otherwise cause a Change of Control under this clause (c).

Notwithstanding the foregoing, a “Change of Control” shall not be deemed to have occurred by virtue of (i) any indirect Change of Control of the Borrower resulting from a change of control of Post, or (ii) the distribution by Post of its retained beneficial interest in the Borrower and its Subsidiaries by means of a spin-off or split-off to its shareholders (however evidenced or structured).

“**Class**” (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Credit Commitments, Incremental Revolving Credit Commitments, Other Revolving Commitments of a given Refinancing Series, Term B Commitments, Incremental Term Loan Commitments or Refinancing Term Commitments of a given Refinancing Series and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Original Revolving Credit Loans, Incremental Revolving Loans, Other Revolving Loans of a given Refinancing Series, Term B Loans, Incremental Term Loans or Refinancing Term Loans of a given Refinancing Series. Loans that are not fungible for United States federal income tax purposes shall be construed to be in different Classes or tranches. Commitments that, if and when drawn in the form of Loans, would yield Loans that are construed to be in different Classes or tranches pursuant to the immediately preceding sentence shall be construed to be in different Classes or tranches of Commitments corresponding to such Loans. There shall be no more than an aggregate of two Classes of revolving credit facilities and four Classes of term loan facilities under this Agreement.

“Closing Annual Financial Statements” means the audited consolidated balance sheets of the Active Nutrition Business and the consolidated statements of operations, Stockholders Equity and cash flows of the Active Nutrition Business for the three latest Fiscal Years ending more than 90 days prior to the Closing Date.

“Closing Date” means the first date all the conditions precedent referred to in Section 4.01 are satisfied or waived in accordance with Section 10.01, which date is October 21, 2019.

“Code” means the Internal Revenue Code of 1986, as amended (unless otherwise provided herein).

“Collateral” means all of the “Collateral” referred to in the Collateral Documents and all of the other property provided as collateral security under the terms of the Collateral Documents.

“Collateral Agreement” means the guarantee and collateral agreement of even date herewith executed and delivered by the Loan Parties and substantially in the form of Exhibit G.

“Collateral Documents” means, collectively, the Collateral Agreement, each of the mortgages, collateral assignments, supplements to all of the foregoing, security agreements, pledge agreements, control agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 4.01(a)(ii), or 6.11, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Co-Managers” means BMO Capital Markets Corp., Coöperatieve Rabobank U.A., New York Branch, Nomura Securities International, Inc., SunTrust Robinson Humphrey, Inc., UBS Securities LLC and Wells Fargo Securities, LLC, in their capacities as co-managers.

“Commitment” means a Term B Commitment, a Revolving Credit Commitment, an Incremental Revolving Credit Commitment, an Incremental Term Loan Commitment, a Refinancing Term Commitment or an Other Revolving Commitment, as the context may require.

“Committed Loan Notice” means a notice of (a) a Revolving Credit Borrowing or (b) a Term Borrowing, which shall be substantially in the form of Exhibit A-1.

“Common Stock” means with respect to any Person, any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person’s common stock whether or not outstanding on the Closing Date, and includes, without limitation, all series and classes of such common stock.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“**Consolidated Current Assets**” means, as at any date of determination, the total assets of a Person and its Restricted Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents.

“**Consolidated Current Liabilities**” means, as at any date of determination, the total liabilities of a Person and its Restricted Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

“**Consolidated EBITDA**” means, at any date of determination, an amount equal to Consolidated Net Income of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period, plus (i) the following, without duplication, to the extent deducted in calculating such Consolidated Net Income:

(a) Consolidated Interest Charges, plus

(b) the provision for federal, state, local and foreign income and franchise taxes payable (calculated net of federal, state, local and foreign income tax credits) and other taxes, interest and penalties included under GAAP in income tax expense (*provided* that such amounts in respect of any Restricted Subsidiary shall be included in this clause (b) only to the extent that a corresponding amount would be permitted at the date of determination to be dividended or distributed to the Borrower by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its Organization Documents and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its stockholders, partners or members), plus

(c) depreciation and amortization expenses (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period), plus

(d) other non-recurring expenses, write-offs, write-downs or impairment charges which do not represent a cash item in such period (or in any future period) (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period and any non-cash charge, expense or loss relating to write-offs, write-downs or reserves with respect to accounts receivable or inventory), plus

(e) non-cash charges or expenses related to stock-based compensation and other non-cash charges or non-cash losses (including, extraordinary, unusual or non-recurring non-cash losses) incurred or recognized, plus

(f) cash or non-cash charges constituting fees and expenses incurred in connection with the Transactions, plus

(g) unrealized and realized net losses in the fair market value of any arrangements under Swap Contracts and losses, charges and expenses attributable to the early extinguishment or conversion of Indebtedness, arrangements under Swap Contracts or other derivative instruments (including deferred financing expenses written off and premiums paid), plus

(h) any expenses or charges related to any issuance of Equity Interests or debt securities, Investments (whether or not consummated), acquisitions (whether or not consummated), Dispositions (whether or not consummated), recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including any amendment or other modification of the Obligations or other Indebtedness; plus

(i) one-time deal advisory, financing, legal, accounting, and consulting cash expenses incurred by the Borrower and its Restricted Subsidiaries in connection with any Permitted Acquisitions or other Investment in the nature of an acquisition not constituting the consideration for any such Permitted Acquisition or other Investment in the nature of an acquisition, plus

(j) non-cash losses and expenses resulting from fair value accounting (as permitted by Accounting Standard Codification Topic No. 825-10-25 – Fair Value Option or any similar accounting standard), plus

(k) [reserved], plus

(l) non-cash losses on sales of Receivables that are Disposed of in connection with a Qualified Receivables Transaction permitted hereunder; plus

(m) extraordinary, unusual or non-recurring cash charges and losses incurred or recognized, plus

(n) any increase in cost of goods sold resulting from the write up of inventory attributable to purchase accounting treatment with respect to any acquisition, plus

(o) the amount of any expected cost savings, operating improvements and expense reductions, product margin synergies and other synergies (net of the amount of actual amounts realized) reasonably identifiable and factually supportable (in the good faith determination of the Borrower) related to (A) the Transactions and (B) after the Closing Date, permitted asset sales, mergers or other business combinations, acquisitions, Investments, Dispositions or divestitures, optimizations, facility consolidations, operating improvements and expense reductions, restructurings, cost saving initiatives and other similar initiatives (in each case calculated on a pro forma basis as though such cost savings, operating improvements and expense reductions, product margin synergies and other synergies had been realized on the first day of such period and as if such cost savings, operating improvements and expense reductions, product margin synergies and other synergies were realized during the entirety of such period); provided that, such cost savings, operating improvements and expense reductions, product margin synergies and other synergies are reasonably expected to be realized within 24 months of the event giving rise

thereto or the consummation of such transaction; provided further that, with respect to clause (B) above, the aggregate amount of cost savings, operating improvements and expense reductions, product margin synergies and other synergies added-back pursuant to this clause (o) in any four consecutive fiscal quarter period, taken together with the aggregate amount of cost savings, operating expense reductions, other operating improvements and acquisition synergies added-back in connection with Permitted Acquisitions or other permitted Investments pursuant to clause (C) below, shall not exceed 25.00% of Consolidated EBITDA for such period prior to giving effect to this clause (o), plus

(p) costs, charges, accruals, reserves or expenses attributable to the undertaking and/or implementation of cost savings initiatives or operating expense reductions, product margin synergies and other synergies and similar initiatives, integration, transition, reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, facilities opening and pre-opening, business optimization and other restructuring costs, charges, accruals, reserves and expenses including inventory optimization programs, software development costs and costs related to the closure or consolidation of facilities, branches or distribution centers, and plants, the closure, consolidation or transfer of production lines between facilities and curtailments, costs related to entry into new markets, consulting and other professional fees, signing costs and bonuses, retention or completion bonuses, executive recruiting costs, relocation expenses, severance payments, modifications to, or losses on settlement of, pension and post-retirement employee benefit plans, new systems design and implementation costs, and project startup costs, plus

(q) to the extent not otherwise included above, proceeds of business interruption insurance in an amount representing the earnings for the applicable period that such proceeds are intended to replace (whether or not received so long as such Person in good faith expects to receive the same within the next four fiscal quarters (it being understood that to the extent not actually received within such fiscal quarters, such proceeds shall be deducted in calculating Consolidated EBITDA for such fiscal quarters)), plus

(r) the amount of any earn-out and contingent consideration obligations incurred or accrued in connection with any Permitted Acquisition or other Investment in the nature of an acquisition and paid or accrued during such applicable period;

and (ii) minus, without duplication,

(x) unrealized and realized net gains included in Consolidated EBITDA for such Measurement Period in respect of hedging transactions and mark-to-market of Indebtedness denominated in foreign currencies resulting from the application of FASB ASC 830 or any similar accounting standard,

(y) non-cash gains included in Consolidated Net Income for such Measurement Period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or a reserve for a potential cash gain in any prior period), and

(z) the amount added back in Consolidated EBITDA pursuant to clause (g) above, to the extent such business interruption proceeds were not received within the time period anticipated or required by such clause,

If there has occurred a Permitted Acquisition or other Investment in the nature of an acquisition permitted by this Agreement during the applicable Measurement Period, or for purposes of calculating the pro forma Total Net Leverage Ratio or Secured Net Leverage Ratio after the applicable Measurement Period but on or prior to the Ratio Calculation Date in accordance with Section 1.09(b), Consolidated EBITDA shall be calculated on a Pro Forma Basis.

Calculating Consolidated EBITDA on a “Pro Forma Basis” shall mean giving effect to any such Permitted Acquisition or other Investment in the nature of an acquisition, and any Indebtedness incurred or assumed in connection therewith, as follows:

- (A) any Indebtedness incurred or assumed in connection with such Permitted Acquisition or other permitted Investment in the nature of an acquisition was incurred or assumed on the first day of the applicable Measurement Period and remained outstanding,
- (B) the rate on such Indebtedness shall be calculated as if the rate in effect on the date of such Permitted Acquisition or other permitted Investment in the nature of an acquisition had been the applicable rate for the entire period (taking into account any interest rate Swap Contracts applicable to such Indebtedness), and
- (C) all income, depreciation, amortization, taxes, and expense associated with the assets or entity acquired in connection with such Permitted Acquisition or other permitted Investment in the nature of an acquisition for the applicable period shall be calculated on a pro forma basis after giving effect to cost savings, operating expense reductions, other operating improvements and acquisition synergies that are reasonably identifiable and projected by the Borrower in good faith to be realized within twenty-four (24) months after such Permitted Acquisition or other such permitted Investment in the nature of an acquisition (calculated on a pro forma basis as though such items had been realized on the first day of such period) as a result of actions taken by the Borrower or any Restricted Subsidiary in connection with such Permitted Acquisition or other permitted Investment and net of (x) the amount of actual benefits realized during such period from such actions that are otherwise included in the calculation of Consolidated EBITDA in each case from and after the first day of such Measurement Period and (y) the amount of all income, depreciation, amortization, taxes and expenses associated with any assets or entity acquired in connection with such Permitted Acquisition or other such permitted Investment that the Borrower reasonably anticipates will be divested pursuant to Section 7.05(k) or otherwise;

provided that:

(i) the aggregate amount of cost savings, operating expense reductions, other operating improvements and acquisition synergies added-back in connection with Permitted Acquisitions or other permitted Investments pursuant to this clause (C) in any four consecutive fiscal quarter period, taken together with the aggregate amount of cost savings, operating improvements and expense reductions, product margin synergies and other synergies added-back pursuant to clause (o) above, shall not exceed 25.00% of Consolidated EBITDA for such period prior to giving effect to this clause (C); and

(ii) at the time any such calculation pursuant to this clause (C) is made, the Borrower shall deliver to the Administrative Agent a certificate signed by a Responsible Officer (which may be the Compliance Certificate) setting forth reasonably detailed calculations in respect of the matters referred to in this clause (C), as well as the relevant factual support in respect thereof.

Notwithstanding anything to the contrary contained herein, for any period that includes any of the fiscal quarters set forth below, Consolidated EBITDA (pro forma) for such fiscal quarter shall be deemed to be the amount set forth below opposite such fiscal quarter:

<u>Fiscal Quarter Ended</u>	<u>Consolidated EBITDA</u>
June 30, 2019	\$ 61,200,000
March 31, 2019	\$ 49,700,000
December 31, 2018	\$ 41,100,000
September 30, 2018	\$ 44,000,000

“**Consolidated Excess Cash Flow**” means, for any period, an amount (if positive) equal to: (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus, (ii) to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for non-cash charges reducing Consolidated Net Income, including for depreciation and amortization (excluding any such non-cash charge to the extent that it represents an accrual or reserve for a potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period), plus (iii) the Consolidated Working Capital Adjustment, minus (b) the sum, without duplication, of (i) the amounts for such period paid in cash by the Borrower and its Restricted Subsidiaries from operating cash flow (and not already reducing Consolidated Net Income) of (1) scheduled repayments (but not optional or mandatory prepayments) of Indebtedness for borrowed money of the Borrower and its Restricted Subsidiaries (excluding scheduled repayments of Revolving Credit Loans (or other loans which by their terms may be re-borrowed if prepaid) except to the extent the Revolving Credit Commitments (or commitments in

respect of such other revolving loans) are permanently reduced in connection with such repayments) and scheduled repayments of obligations of the Borrower and its Restricted Subsidiaries under Capital Leases (excluding any interest expense portion thereof), (2) Capital Expenditures, (3) payments of the type described in clause (f) of the definition of Consolidated EBITDA, and (4) consideration in respect of Investments made pursuant to Section 7.02 (other than Section 7.02(a), (c), (g) or (p)) (and financed with internally generated cash (and not from the proceeds of Indebtedness)) plus (ii) other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash gain in any prior period).

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Borrower and its Restricted Subsidiaries on a consolidated basis, the sum, without duplication, of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including the Obligations hereunder and any Indebtedness owing or paid to non-Affiliated third parties in respect of Receivables Program Obligations) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct non-contingent obligations arising in connection with letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business and (ii) contingent earn-outs, hold-backs and other deferred payment of consideration in Permitted Acquisitions), (e) Attributable Indebtedness in respect of Capital Leases, (f) all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Borrower or any Restricted Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Restricted Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Restricted Subsidiary.

“Consolidated Interest Charges” means, for any Measurement Period, consolidated interest expense (net of interest income) for such period whether paid or accrued (but without duplication if accrued and paid in the same period and, for purposes of clause (a) of the definition of Consolidated EBITDA, not including any such amount paid if previously accrued and added back in the prior period) and whether or not capitalized (including, without limitation, and without duplication, amortization of original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Leases, imputed interest with respect to Attributable Indebtedness, commissions, discounts and other fees and charges incurred in respect of letters of credit or bankers’ acceptances, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Receivables Transaction owing or paid to non-Affiliated third parties, dividend and distribution payments made in cash on any Disqualified Equity Interests, and net payments, if any, pursuant to interest rate Swap Contracts, but excluding amortization of debt issuance costs), in each case, of or by the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

Notwithstanding anything to the contrary contained herein, for any period that includes any of the fiscal quarters set forth below, Consolidated Interest Charges (pro forma) for such fiscal quarter shall be deemed to be the amount set forth below opposite such fiscal quarter:

<u>Fiscal Quarter Ended</u>	<u>Consolidated Interest Charges</u>
June 30, 2019	\$ 13,800,000
March 31, 2019	\$ 13,800,000
December 31, 2018	\$ 13,800,000
September 30, 2018	\$ 13,800,000

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of the Borrower and its Restricted Subsidiaries on a consolidated basis for the most recently completed Measurement Period taken as a single accounting period determined in conformity with GAAP; *provided* that Consolidated Net Income shall exclude, without duplication, (a) extraordinary gains and extraordinary non-cash losses for such Measurement Period, (b) the net income of any Restricted Subsidiary that is not a Loan Party (other than a Receivables Subsidiary) during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Restricted Subsidiary during such Measurement Period, except that the Borrower’s equity in any net loss of any such Restricted Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Restricted Subsidiary or is a Receivables Subsidiary, except that (x) the Borrower’s equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Borrower or a Restricted Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Restricted Subsidiary, such Restricted Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso) and (y) any such loss for such Measurement Period shall be included to the extent funded with cash contributed by the Borrower or a Restricted Subsidiary, (d) any cancellation of debt income arising from a repurchase of Term Loans by the Borrower pursuant to Section 10.06(b)(vii) or any other early extinguishment of Indebtedness, hedging agreements or other similar instruments, (e) any (i) write-off or amortization made in such period of deferred financing costs and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness, or (ii) good will or other asset impairment charges, write-offs or write-downs, and (f) the effects of purchase accounting adjustments (including the effects of such adjustments pushed down to the Borrower and its Restricted Subsidiaries) in component amounts required or permitted by GAAP resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes.

“Consolidated Senior Secured Debt” means, as of any date of determination, without duplication, the aggregate principal amount of Consolidated Funded Indebtedness outstanding on such date that is secured by a Lien on any asset or property of the Borrower or any Restricted Subsidiary (including, for the avoidance of doubt, purchase money Indebtedness and Attributable Indebtedness in respect of Capital Leases).

“Consolidated Total Assets” means, on any date of determination, the total assets of the Borrower and its Restricted Subsidiaries, determined in accordance with GAAP as shown on the most recent consolidated balance sheet of the Borrower delivered pursuant to Section 6.01(a) or (b) on or prior to such date or, for the period prior to the time any such statements are so delivered pursuant to Section 6.01(a) or (b), the financial statements for the fiscal quarter ended June 30, 2019, in each case after giving pro forma effect to acquisitions or dispositions of Persons, divisions or lines of business that had occurred on or after such balance sheet date and on or prior to such date of determination.

“Consolidated Working Capital” means, as at any date of determination, Consolidated Current Assets of the Borrower and its Restricted Subsidiaries less Consolidated Current Liabilities of the Borrower and its Restricted Subsidiaries.

“Consolidated Working Capital Adjustment” means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period. In calculating the Consolidated Working Capital Adjustment there shall be excluded the effect of reclassification during such period of current assets to long term assets and current liabilities to long term liabilities and the effect of any Permitted Acquisition during such period; *provided*, that there shall be included with respect to any Permitted Acquisition during such period an amount (which may be a negative number) by which the Consolidated Working Capital of the Person acquired in such Permitted Acquisition as at the time of such acquisition exceeds (or is less than) the Consolidated Working Capital of the Person acquired at the end of such period (in each case, substituting the Person acquired for the Borrower and its Restricted Subsidiaries in the calculation of such acquired Consolidated Working Capital).

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

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Conversion/Continuation Notice” means a notice of (a) a conversion of Loans of a particular Class from one Type to the other or (b) a continuation of Eurodollar Rate Loans pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A-2 or any other form approved by the Administrative Agent.

“**Covenant Transaction**” has the meaning specified in Section 1.09(d).

“**Credit Agreement Refinancing Indebtedness**” means Indebtedness incurred solely by the Borrower in the form of one or more series or classes of Loans or Commitments under this Agreement, in each case, issued, incurred or otherwise obtained (including by means of the amendment, extension, refinancing, or renewal of existing Indebtedness) in exchange for, or to refinance, in whole or part, existing Term Loans (and/or Term Commitments) and Revolving Credit Loans (and/or Revolving Credit Commitments), or any then-existing Credit Agreement Refinancing Indebtedness (“**Refinanced Debt**”); *provided* that (i) such Indebtedness is secured by the Collateral on a pari passu basis with the Liens securing the other Obligations hereunder and is not secured by any property or assets other than the Collateral, (ii) such Indebtedness is not guaranteed by any Person other than the Guarantors, (iii) such Indebtedness is incurred solely to refinance, in whole or part, Refinanced Debt, and the proceeds thereof shall be substantially contemporaneously applied to prepay such Refinanced Debt, interest and any premium (if any) thereon, and fees and expenses incurred in connection with such Indebtedness, and any Term Commitments and/or Revolving Credit Commitments so refinanced shall be concurrently terminated, (iv) such Indebtedness (including, if such Indebtedness includes any Revolving Credit Commitments, the unused amount of such Revolving Credit Commitments) is in an original aggregate principal amount not greater than the aggregate principal amount of the Refinanced Debt (and, in the case of Refinanced Debt consisting, in whole or in part, of unused Revolving Credit Commitments, the applicable amount thereof), *plus* accrued and unpaid interest, any premium, and fees and expenses reasonably incurred in connection therewith, (v) such Indebtedness has a maturity no earlier, and a Weighted Average Life to Maturity no shorter, than the Refinanced Debt, (vi) the terms and conditions of such Indebtedness (except as otherwise provided above and with respect to pricing, premiums, fees, rate floors and optional prepayment or redemption terms) are substantially identical to the terms and conditions applicable to the Refinanced Debt, unless (x) such terms apply only after the Latest Maturity Date at the time such Indebtedness is established or (y) this Agreement is amended so that such terms are also applicable for the benefit of the Lenders under any then-existing Facilities and (vii) such Refinanced Debt shall be repaid, all accrued interest, fees, premiums (if any) and penalties in connection therewith shall be paid, and all commitments in respect thereof shall be terminated, on the date such Indebtedness is incurred.

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Declined Proceeds**” has the meaning assigned to such term in Section 2.05(b)(viii).

“Deemed Dividend Problem” means, with respect to any CFC, such CFC’s current and accumulated and undistributed earnings and profits (other than earnings and profits described in Sections 959(c)(1) and 959(c)(2) of the Code), being deemed to be repatriated to the Borrower, the applicable Domestic Subsidiary of the Borrower, or any direct or indirect owner of any of the foregoing, under Section 956 of the Code and the United States Treasury Regulations promulgated thereunder and the effect of such deemed repatriation causing adverse tax consequences to the Borrower, the applicable Domestic Subsidiary of the Borrower, or any direct or indirect owner of any of the foregoing, in each case as determined by the Borrower in its commercially reasonable judgment acting in good faith and in consultation with the Administrative Agent.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (x) with respect to principal, interest or other fees attributable to a Facility, (i) in the case of Loans denominated in an Alternative Currency, the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.0% and (ii) in the case of Loans denominated in U.S. Dollars, the Base Rate plus the Applicable Rate applicable to Base Rate Loans under such Facility plus 2% per annum and (y) with respect to all other Obligations, (i) the Base Rate plus (ii) the Applicable Rate applicable to Base Rate Loans under the Original Revolving Credit Facility plus (iii) 2% per annum, in each case to the fullest extent permitted by applicable Laws, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that, as determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit, within three Business Days of the date required to be funded by it hereunder, unless, with respect to funding obligations in respect of Loans, such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) has provided written notice to the Borrower and the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder (unless such written notice or public statement relates to such Lenders’ obligation to fund a Loan hereunder and states that such position is based on such Lender’s good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after request by the Administrative Agent made in good faith belief that such Lender may not honor its funding obligations, to confirm in a manner reasonably satisfactory to the Administrative Agent that it will comply with its funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent) or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) become the subject of

a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgements or writs of attachment on its assets or permits such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“Designated Non-Cash Consideration” means the fair market value (as determined by the Borrower in good faith) of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to Section 7.05(j) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower setting forth the basis of such valuation (which amount will be reduced by the amount of cash or Cash Equivalents received in connection with a subsequent sale or conversion of such Designated Non-Cash Consideration to cash or Cash Equivalents).

“Disposition” or **“Dispose”** means the sale, consignment, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including (x) any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and (y) any issuance of Equity Interests by any Restricted Subsidiary of such Person. For the avoidance of doubt, any issuance of Equity Interests by the Borrower shall not be a Disposition.

“Disqualified Equity Interests” means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interest into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests) (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), in whole or in part, (c) provide for the mandatory scheduled payment of distributions or dividends in cash or (d) are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case prior to the date that is 91 days after the Latest Maturity Date in effect at the time of issuance of such Equity Interests; *provided, however*, that only the portion of Equity Interests which so mature or are mandatorily redeemable, are redeemable at the option of the holder thereof, provide for the mandatory scheduled prepayment of distributions or dividends, or which are or become convertible as described above after the Latest Maturity Date shall be deemed to be Disqualified Equity Interests; and *provided further, however*, that if such Equity Interests are issued pursuant to a plan for the benefit of the employees of the Borrower or its Restricted Subsidiaries, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Lender” means (a) any Person (or its Subsidiaries and Affiliates) who is an operating competitor of the Borrower or its Subsidiaries and that is separately identified by the Borrower to the Administrative Agent by name in writing prior to the Closing Date (which list of operating competitors may be supplemented by the Borrower after the Closing Date by means of a written notice to the Administrative Agent; *provided* that such supplementation shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation in the Loans or Commitments hereunder) and (b) with respect to each Person that is a “Disqualified Lender” pursuant to clause (a) above, any of its Affiliates (other than any Affiliate of a Person that is solely a “Disqualified Lender” pursuant to clause (a) above and is a bona fide debt fund or an investment vehicle that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its business and for purposes hereof, a “vulture fund” or Person that purchases distressed debt in the ordinary course of its business shall be deemed not to be a bona fide debt fund or an investment vehicle that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its business) that is either (i) identified to the Administrative Agent by name in writing by the Borrower from time to time (*provided* that such supplementation shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation in the Loans hereunder) or (ii) clearly identifiable as an Affiliate of such Disqualified Lender solely on the basis of such Affiliate’s name.

“Disregarded Domestic Subsidiary” means any Domestic Subsidiary (a) substantially all of the assets of which consist of the Equity Interests of one or more CFCs or (b) that is treated as a disregarded entity for U.S. federal income tax purposes that holds, directly or indirectly, the Equity Interests of one or more CFCs.

“Domestic Subsidiary” means any Restricted Subsidiary organized in the United States or any political subdivision thereof but excluding any direct or indirect Subsidiary of a CFC.

“ECF Percentage” means, for any given Fiscal Year, 75%; *provided* that if, as of the last day of such Fiscal Year, the Secured Net Leverage Ratio is less than or equal to 3.35:1.00, the ECF Percentage shall be 50%.

“Early Opt-in Election” means the occurrence of:

- (A) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 3.08, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate, and

- (B) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Yield” means, as to any Loans of any Class, the effective yield on such Loans, taking into account the applicable interest rate margins, any interest rate floors or similar devices and all fees, including upfront or similar fees or original issue discount (amortized over the shorter of (x) the original stated life of such Loans and (y) the four years following the date of incurrence thereof) payable generally to Lenders making such Loans, but excluding arrangement fees, structuring fees, administrative or agency fees, commitment fees, underwriting fees or other fees payable to any lead arranger (or its affiliates) (regardless of whether paid in whole or in part to any or all Lenders) in connection with the commitment or syndication of such Indebtedness.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Sections 10.06(b)(v) and (vi) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Employee Matters Agreement” means that certain Employee Matters Agreement by and among Post, the Borrower, and BRBR, dated as of October 21, 2019, as the same may be amended, modified, supplemented, restated or replaced from time to time.

“Engagement Letter” means the Engagement and Commitment Letter, dated September 26, 2019, among the Borrower, the Arrangers and the Co-Managers.

“Environmental Claim” means any written notice, claim, demand, action, litigation, toxic tort, proceeding, demand, request for information, complaint, citation, summons, investigation, notice of non-compliance or violation, cause of action, consent order, consent decree, investigation, or other proceeding by any Governmental Authority or any other Person, arising out of, based on or pursuant to any Environmental Law or related in any way to any actual, alleged or threatened Environmental Liability.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, agreements or governmental restrictions relating to human health and safety, pollution, the protection of the environment or the release of any materials into the environment, including those related to hazardous materials, substances or wastes and air and water emissions and discharges.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), obligation, responsibility or cost directly or indirectly resulting from or based upon (a) any violation of, or liability under, any Environmental Law, (b) the generation, use, handling, transportation, storage, distribution, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment, (e) natural resource damage or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization issued pursuant to or required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (or Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means the occurrence of any of the following (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification concerning the imposition upon the Borrower or any of its ERISA Affiliates of any liability with respect to such withdrawal, or a determination that a Multiemployer Plan is or is expected to be insolvent within the meaning of Title IV of ERISA; (d) the filing of a notice of intent to terminate,

or the treatment of a Pension Plan amendment as a termination of, any Pension Plan, under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that the adjusted funding target attainment percentage (as defined in Section 436(j)(2) of the Code) of any Pension Plan is both less than 80% and such Pension Plan is more than \$20,000,000 underfunded on an adjusted funding target attainment percentage basis; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; or (i) the failure to satisfy the Pension Funding Rules with respect to any Pension Plan, whether or not waived.

“Escrow Subsidiary” means a wholly-owned Subsidiary (i) created by the Borrower or any Subsidiary for the sole purpose of issuing debt securities the net proceeds of which must be deposited into a secured escrow account of such Subsidiary pending consummation of a Permitted Acquisition and which debt securities must be redeemed if such Permitted Acquisition is not consummated, (ii) engaged in no activities other than those incidental to the issuance of such debt securities, (iii) owning no assets other than amounts that have been deposited into such secured escrow account and (iv) which has been designated as an Escrow Subsidiary by the Borrower’s Board of Directors as evidenced by a filing with the Administrative Agent of (1) a board resolution of the Borrower giving effect to such designation and (2) an officers’ certificate certifying that such designation, and the transactions in which such Subsidiary will engage (including the terms of the debt securities issued by such Subsidiary), comply with the requirements of this definition; *provided* that if at any time (x) such Subsidiary ceases to comply with the requirements of this definition or (y) the debt securities become guaranteed by (or secured by assets of) any Person other than such Subsidiary, such designated Subsidiary shall no longer constitute an Escrow Subsidiary under this Agreement.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Euro” and **“€”** means the single currency of any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with the legislation of the European Union relating to economic and monetary union.

“Eurodollar Rate” means for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate per annum obtained by multiplying (I)(x) (i) the rate per annum equal to the rate determined by the Administrative Agent to be the offered Screen Rate for deposits (for delivery on the first day of such period) (such page currently being in relation to a Loan denominated in U.S. Dollars or Pounds Sterling, as currently published on Reuters Screen LIBOR01 Page or LIBOR02 Page (or any successor thereto) and (ii) in relation to a Loan denominated in Euros, the EURIBOR01 page) (the **“LIBO Rate”**) with a term equivalent to such Interest Period in the relevant currency, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (y) in the event the rates referenced in the preceding clause (x) do not appear on such page or service or if such page or service shall cease to be available, the rate determined by the Administrative Agent to be the

offered rate on such other page or other service which displays an average London Interbank Offered Rate for deposits (for delivery on the first day of such period) with a term equivalent to such Interest Period in such currency, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (z) in the event the rates referenced in the preceding clauses (x) and (y) are not available, the rate per annum equal to the offered quotation rate by first class banks in the London interbank market to the Administrative Agent for deposits (for delivery on the first day of the relevant period) in such currency of amounts in same day funds comparable to the principal amount of the applicable Loan of the Administrative Agent for which the Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date; provided that, if the rates referenced in clause (x) shall not be available at the applicable time for the applicable Interest Period (an “**Impacted Interest Period**”), then the Eurodollar Rate for such currency and Interest Period shall be the Interpolated Rate by (II) the Statutory Reserve Rate; *provided, however*, notwithstanding the foregoing, at no time will the Eurodollar Rate be deemed to be less than 1.00% per annum.

“**Eurodollar Rate Loan**” means a Revolving Credit Loan or a Term Loan that bears interest at a rate based on the definition of “**Eurodollar Rate**.”

“**Event of Default**” has the meaning specified in Section 8.01.

“**Excluded Assets**” has the meaning specified in the Collateral Agreement.

“**Excluded Subsidiary**” means (a) any Affected Foreign Subsidiary, or any direct or indirect Subsidiary of any Affected Foreign Subsidiary, (b) any Receivables Subsidiary, (c) any Escrow Subsidiary, (d) any Unrestricted Subsidiary, (e) any Disregarded Domestic Subsidiary, (f) Active Nutrition International GmbH, or (g) any Restricted Subsidiary that is not a wholly owned Subsidiary and that constitutes a bona fide joint venture with a third party that is not an Affiliate of the Borrower, if, in the case of this clause (g), the granting of a security interest therein (i) would be prohibited by, cause a default under or result in a breach of, or would give another Person (other than the Borrower or any Restricted Subsidiary) a right to terminate, under any organizational document, shareholders, joint venture or similar agreement applicable to such Restricted Subsidiary that is not a wholly owned Subsidiary and that constitutes a bona fide joint venture with a third party that is not an Affiliate of the Borrower or (ii) would require obtaining the consent of any Person (other than the Borrower or any Restricted Subsidiary).

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by overall net income (however denominated), franchise Taxes (in lieu of net income Taxes), and branch profits Taxes in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under the Laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, or (ii) that are Other Connection Taxes, (b) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), (c) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any United States federal withholding Tax that (i)

is required to be imposed on amounts payable to or for the account of such Lender pursuant to the Laws in force at the time such Lender acquires such interest in the Loan or Commitment (or designates a new Lending Office) or (ii) is attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 3.01(e)(ii), except that in the case of a Lender that designates a new Lending Office or becomes a Party to this Agreement pursuant to an assignment, withholding Taxes shall not be Excluded Taxes to the extent that such Taxes were not Excluded Taxes with respect to such Lender or its assignor, as the case may be, immediately before such designation of a new Lending Office or assignment; and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Extraordinary Receipt" means any cash received by or paid to any Person as a result of proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings) and condemnation awards (and payments in lieu thereof); *provided, however*, that an Extraordinary Receipt shall not include cash receipts from proceeds of insurance or condemnation awards (or payments in lieu thereof) to the extent that such proceeds or awards are received by any Person in respect of any third party claim against, or liability of, such Person and applied to pay (or to reimburse such Person for its prior payment of) such claim or liability and the costs and expenses of such Person with respect thereto.

"Facility" means the Term B Facility, a Revolving Credit Facility, an Incremental Facility or a Refinancing Facility, as the context may require.

"Facility Fee Rate" means, with respect to the Original Revolving Credit Commitments, (a) from the Closing Date to the date following the Closing Date on which a Compliance Certificate is delivered pursuant to Section 6.02(a) in respect of the first full fiscal quarter following the Closing Date, 0.50% and (b) thereafter, the applicable percentage per annum set forth below determined by reference to the Secured Net Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

<u>Pricing Level</u>	<u>Secured Net Leverage Ratio</u>	<u>Facility Fee Rate</u>
1	³ 3.50 to 1.00	0.50%
2	< 3.50 to 1.00 and ³ 2.50 to <u>1.00</u>	0.375%
3	< 2.50 to 1.00	0.25%

Any increase or decrease in the Facility Fee Rate resulting from a change in the Secured Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); *provided, however*, that if a Compliance Certificate is not delivered when due in accordance with such Section, then Pricing Level 1 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered (and thereafter the Pricing Level otherwise determined in accordance with this definition shall apply).

Furthermore, the Facility Fee Rate in respect of Other Revolving Commitments shall be the applicable percentage per annum set forth in the relevant Refinancing Amendment.

Notwithstanding anything to the contrary contained in this definition, the determination of the Facility Fee Rate for any period shall be subject to the provisions of Section 2.10(b).

“**FASB ASC**” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“**Federal Funds Effective Rate**” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; *provided* that if the Federal Funds Effective Rate for any day is less than zero, the Federal Funds Effective Rate for such day will be deemed zero.

“**Federal Reserve Bank of New York’s Website**” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“**Fee Letters**” means (a) the Agency Fee Letter, (b) the Arranger Fee Letter, dated September 26, 2019, among the Borrower, the Arrangers and the Co-Managers and (c) the Additional Fee Letter, dated September 26, 2019, among the Borrower and the other parties thereto.

“**Fiscal Year**” means the fiscal year of the Borrower and its Restricted Subsidiaries ending on September 30 of each calendar year.

“**Foreign Government Scheme or Arrangement**” has the meaning specified in Section 5.11(c).

“**Foreign Lender**” means a Lender that is not a U.S. Person.

“**Foreign Plan**” has the meaning specified in Section 5.11(c).

“**Foreign Subsidiary**” means any Subsidiary that is not a Domestic Subsidiary.

“**Formation Documents**” means the Employee Matters Agreement, the Master Services Agreement, the Master Transaction Agreement, the Borrower Operating Agreement, the Tax Matters Agreement and the Tax Receivable Agreement.

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender’s Applicable Revolving Credit Percentage of the outstanding L/C Obligations in respect of Letters of Credit issued by such L/C Issuer other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including the National Association of Insurance Commissioners and any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term **“Guarantee”** as a verb has a corresponding meaning.

“Guarantors” means, collectively, each existing and future direct or indirect Subsidiary of the Borrower (other than any Excluded Subsidiary or any Immaterial Subsidiary).

“Hazardous Materials” means all explosive or radioactive substances or wastes, contaminants, pollutants or any other hazardous or toxic substances, wastes or materials regulated under or defined in any Environmental Law, including petroleum, its derivatives or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, and infectious or medical wastes.

“Hazardous Material Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Material, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Material, and any corrective action or response action with respect to any of the foregoing.

“Hedge Bank” means any Person that, at the time it enters into a Swap Contract permitted hereunder, is a Lender, the Administrative Agent or an Arranger or an Affiliate of a Lender, the Administrative Agent or an Arranger in its capacity as a party to such Swap Contract.

“Immaterial Subsidiary” means, as of any date, any Restricted Subsidiary that, (a) as of the last date of the most recent fiscal quarter of the Borrower for which financial statements have been delivered, accounts for less than 5.00% of the Consolidated Total Assets of the Borrower and its Restricted Subsidiaries and less than 5.00% of the total revenue of the Borrower and its Restricted Subsidiaries on a consolidated basis, in each case, as measured as of the last day of the most recent fiscal quarter of the Borrower for which financial statements have been delivered and (b) does not, directly or indirectly, hold Equity Interests in any Restricted Subsidiary that is not an Immaterial Subsidiary as of such date; *provided* that if, as of the last date of the most recent fiscal quarter of the Borrower for which financial statements have been delivered, the aggregate amount of Consolidated Total Assets or net sales attributable to all Restricted Subsidiaries that are Immaterial Subsidiaries exceeds 7.50% of the Consolidated Total Assets of the Borrower and its Restricted Subsidiaries or 7.50% of the total revenues of the Borrower and its Restricted Subsidiaries on a consolidated basis, then a sufficient number of Restricted Subsidiaries which are not Excluded Subsidiaries shall be designated by the Borrower (or, in the event the Borrower has failed to do so within twenty days, the Administrative Agent) to eliminate such excess, and such designated Restricted Subsidiaries shall no longer constitute Immaterial Subsidiaries under this Agreement.

“Immediate Family Member” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, domestic partner, former domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships), any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals, such individual’s estate (or an executor or administrator, in each case, acting on their behalf) or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“Increased Amount Date” has the meaning specified in Section 2.14(b).

“Incremental Available Amount” means

(a)(i) \$95,000,000 less (ii) the aggregate principal amount of Indebtedness incurred pursuant to Section 2.14(a) and Section 7.03(s) in reliance of this clause (a), plus

(b)(i) the amount of any voluntary prepayments or debt buybacks of Term Loans, loans under any Incremental Equivalent Debt and/or loans under other Indebtedness, in each case, secured on a pari passu basis with the Liens securing the Obligations hereunder (which, in the case of any such Indebtedness that constitutes revolving Indebtedness, is accompanied by a permanent reduction in the relevant commitment), (ii) voluntary prepayments of Revolving Credit Loans to the extent accompanied by a permanent reduction in the relevant commitment, and (iii) the amount paid in cash in respect of any reduction in the outstanding principal amount of any Term Loan resulting from any assignment of such Term Loan to the Borrower pursuant to Section 10.06(b)(vii) and/or the application of “yank-a-bank” provisions pursuant to Section 10.13, in each case, made prior to the Increased Amount Date (in the case of each of clauses (b)(i), (ii) and (iii), other than prepayments, repayments or commitment reductions financed with the proceeds of long-term indebtedness (other than revolving indebtedness (except where revolving indebtedness is used to replace revolving indebtedness))) less (iv) the aggregate principal amount of Indebtedness incurred pursuant to Section 2.14(a) and Section 7.03(s) in reliance on this clause (b), plus

(c) an unlimited amount so long as, after giving effect to the incurrence of such Incremental Equivalent Debt or such Incremental Facility (assuming all commitments under or in respect of the Revolving Credit Facility Increase, Incremental Term Loans or Incremental Equivalent Debt are fully funded and without netting the cash proceeds thereof), (i) in the case of any Incremental Facility or Incremental Equivalent Debt secured by any or all of the Collateral on a pari passu basis with the Liens securing the Obligations hereunder, the pro forma Secured Net Leverage Ratio would not exceed 3.50:1.00, (ii) in the case of any Incremental Facility or Incremental Equivalent Debt secured by any or all of the Collateral on a junior basis to the Liens securing the Obligations hereunder or secured by assets that do not constitute Collateral, the pro forma Secured Net Leverage Ratio would not exceed 4.10:1.00 and (iii) in the case of any Incremental Facility or Incremental Equivalent Debt that is unsecured, the pro forma Total Net Leverage Ratio would not exceed 4.10:1.00,

provided, that to the extent the proceeds of any Incremental Term Loans or Incremental Equivalent Debt are intended to be applied to finance a Limited Condition Acquisition, pro forma compliance shall be tested in accordance with Section 1.09(c); and

provided, further that, at the election of the Borrower, (I) the Borrower shall be deemed to have used amounts under clause (c) (to the extent compliant therewith) prior to utilization of amounts under clause (a) or (b), (II) Loans may be incurred simultaneously under clauses (a), (b) and (c), and proceeds from any such incurrence may be utilized in a single transaction, at the election of the Borrower, by first calculating the incurrence under clause (c) above and then calculating the incurrence under clauses (a) and (b) above and (III) any Loans incurred in reliance on clause (a) and/or (b) may be reclassified, as the Borrower may elect from time to time, as incurred under clause (c) to the extent permitted thereunder at such time on a pro forma basis).

“Incremental Borrowing” means a borrowing of Incremental Revolving Loans or Incremental Term Loans, as the context requires.

“Incremental Equivalent Debt” has the meaning specified in Section 7.03(s).

“Incremental Facility” means, at any time, as the context may require, the aggregate amount of the Incremental Revolving Loan Lenders’ Incremental Revolving Credit Commitments and/or the Incremental Term Loan Lenders’ Incremental Term Loan Commitments of a given Class at such time and, in each case, but without duplication, the Credit Extensions made thereunder.

“Incremental Revolving Credit Commitments” has the meaning specified in Section 2.14(a).

“Incremental Revolving Loan Lender” has the meaning specified in Section 2.14(b).

“Incremental Revolving Loans” has the meaning specified in Section 2.14(e).

“Incremental Term Loan Commitments” has the meaning specified in Section 2.14(a).

“Incremental Term Loan Lender” has the meaning specified in Section 2.14(b).

“Incremental Term Loan Maturity Date” means the date on which Incremental Term Loans of a Class shall become due and payable in full hereunder, as specified in the applicable Joinder Agreement, including by acceleration or otherwise.

“Incremental Term Loans” has the meaning specified in Section 2.14(f).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business and not past due for more than 60 days after the date on which such trade account is due (unless

being contested in good faith and by appropriate proceedings) and (ii) earn-outs, hold-backs and other deferred payment of consideration in Permitted Acquisitions to the extent not required to be reflected as liabilities on the balance sheet of the Borrower and its Restricted Subsidiaries in accordance with GAAP);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capital Leases;

(g) all obligations of such Person in respect of Disqualified Equity Interests valued, in the case of a redeemable preferred interest that is a Disqualified Equity Interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid distributions or dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“**Indemnified Liabilities**” has the meaning specified in [Section 10.04\(b\)](#).

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“**Indemnitee**” has the meaning specified in [Section 10.04\(b\)](#).

“**Information**” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a non-confidential basis prior to disclosure by the Borrower or any Subsidiary.

“**Interest Payment Date**” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; *provided, however*, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each December, March, June and September and the Maturity Date of the Facility under which such Loan was made.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan, as applicable, and ending on the date one, two, three or six months (or, if approved by the relevant Lenders, 12 months or any period less than one month) thereafter, provided that if an Interest Period other than one, two, three or six months is requested, notice shall be delivered not later than 10 a.m. four Business Days before the date of the proposed Borrowing; *provided that*:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“Interest Rate Determination Date” means, with respect to any Interest Period in respect of Eurodollar Rate Loans, the date that is two Business Days prior to the first day of such Interest Period.

“Interpolated Rate” means, in relation to any Eurodollar Rate Loan, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the applicable Eurodollar Rate for the longest period (for which the applicable Eurodollar Rate is available for deposits in the applicable currency) that is shorter than the Impacted Interest Period of that Eurodollar Rate Loan and (b) the applicable Eurodollar Rate for the shortest period (for which such Eurodollar Rate is available for deposits in the applicable currency) that exceeds the Impacted Interest Period of that Eurodollar Rate Loan, in each case, as of 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period; provided that if the Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) the purchase or other acquisition of assets of another Person if such assets constitute a business, division or operating unit (other than purchases or other acquisitions of inventory, materials, supplies and/or equipment in the ordinary course of business), (c) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or interest in, another Person, or (d) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“**IP Rights**” has the meaning specified in Section 5.16.

“**IRS**” means the United States Internal Revenue Service.

“**ISP**” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“**Issuer Documents**” means with respect to any Letter of Credit, the Letter of Credit Application and any other document, agreement or instrument entered into by the applicable L/C Issuer and the Borrower (or any Restricted Subsidiary) or in favor of such L/C Issuer relating to such Letter of Credit.

“**Joinder Agreement**” means an agreement substantially in the form of Exhibit F.

“**Judgment Currency**” has the meaning specified in Section 10.20.

“**Junior Lien Intercreditor Agreement**” means an intercreditor agreement among the Administrative Agent and the other parties from time to time party thereto, substantially in the form of Exhibit J.

“**L/C Advance**” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Credit Percentage.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“**L/C Issuer**” means with respect to Letters of Credit issued hereunder on or after the Closing Date, (i) Credit Suisse AG, Cayman Islands Branch, (ii) Bank of America, N.A., (iii) any other Revolving Credit Lender that may become and agrees to become an L/C Issuer pursuant to Section 2.03(1), (iv) any successor issuer of Letters of Credit hereunder or (v) collectively, all of the foregoing, in each case, in their respective capacities as an issuer thereof. It is understood and agreed that each L/C Issuer’s and its respective Affiliates’ share of the Letter of Credit Sublimit shall not exceed the amount set forth opposite such L/C Issuer’s name on Schedule 2.01 (as such Schedule may be amended with the consent of each affected L/C Issuer and the Borrower) under the caption “Letter of Credit Commitment.”

“L/C Obligations” means, as at any date of determination, (i) the aggregate amount available to be drawn under all outstanding Letters of Credit plus (ii) the aggregate of all Unreimbursed Amounts, including all L/C Borrowings, in each case, using the U.S. Dollar Equivalent of amounts denominated in an Alternative Currency. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Latest Maturity Date” means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest maturity date of any Refinancing Term Loan, any Refinancing Term Commitment, any Incremental Term Loans, any Incremental Revolving Credit Commitments or any Other Revolving Commitments, in each case as extended in accordance with this Agreement from time to time.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“LCA Election” means the Borrower’s election to treat a specified Investment that is an acquisition or in the nature of an acquisition (including a Permitted Acquisition) as a Limited Condition Acquisition by giving written notice of such election to the Administrative Agent at any time prior to the closing of such Limited Condition Acquisition.

“LCA Test Date” has the meaning specified in Section 1.09(c).

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Letter of Credit” means any standby letter of credit issued hereunder.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect for the applicable Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to \$20,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facilities.

“LIBO Rate” has the meaning specified in the definition of Eurodollar Rate.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Limited Condition Acquisition” means any Permitted Acquisition, or other Investment in the nature of an acquisition, by the Borrower or one or more of its Restricted Subsidiaries whose consummation is not, by the terms of the applicable purchase, sale, joint venture, merger or any other definitive agreement with respect to such Permitted Acquisition or other Investment, conditioned on the availability of, or on obtaining, third party financing.

“Loan” means an extension of credit by a Lender to the Borrower hereunder in the form of a Term Loan or Revolving Credit Loan.

“Loan Documents” means this Agreement, each Note, each Issuer Document, the Collateral Documents, the Pari Passu Intercreditor Agreement, the Fee Letters, each agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 of this Agreement, any Refinancing Amendment, any Joinder Agreement and any other agreement or instrument designated as a “Loan Document” by its terms.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“Market Capitalization” means an amount equal to (a) the total number of issued and outstanding shares of BRBR’s Common Stock that are issued and outstanding on the date of the relevant Restricted Payment and listed on The New York Stock Exchange (or, if the primary listing of such Common Stock is on another exchange, on such other exchange) multiplied by (b) the arithmetic mean of the closing price per share of such Common Stock as reported by The New York Stock Exchange (or, if the primary listing of such Common Stock is on another exchange, on such other exchange) for each of the 30 consecutive trading days immediately preceding the date of such Restricted Payment.

“Master Services Agreement” means that certain Master Services Agreement dated as of October 21, 2019 by and among Post, BRBR and the Borrower, as the same may be amended, modified, supplemented, restated or replaced from time to time.

“Master Transaction Agreement” means that certain Master Transaction Agreement dated as of October 7, 2019 by and among Post, BRBR and the Borrower, as the same may be as the same may be amended, modified, supplemented, restated or replaced from time to time.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the results of operations, business, properties, liabilities (actual or contingent) or financial condition of the Borrower and its Restricted Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Maturity Date” means, (i) with respect to the Term B Loans and any subsequent additions thereto, October 21, 2024, (ii) with respect to the Original Revolving Credit Commitments and any subsequent additions thereto, October 21, 2024, (iii) with respect to any Refinancing Term Loans or Other Revolving Commitments, the final maturity date applicable thereto as specified in the applicable Refinancing Amendment and (iv) with respect to any Incremental Term Loans, the final maturity date applicable thereto as specified in the applicable Joinder Agreement; provided, in each case, that if such date is not a Business Day, then the applicable Maturity Date shall be the next preceding Business Day.

“Maximum Rate” has the meaning specified in [Section 10.09](#).

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of the Borrower for which financial statements are available (other than for purposes of calculating ratios pursuant to [Section 7.11](#), which shall look to the most recently completed four fiscal quarters of the Borrower).

“MFN Protection” has the meaning specified in [Section 2.14\(d\)\(ii\)](#).

“MNPI” has the meaning specified in [Section 6.02](#).

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means an employee benefit plan defined in Section 4001(a)(3) of ERISA to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years has made or been obligated to make contributions.

“Multiple Employer Plan” means a plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means with respect to any Disposition by the Borrower or any of its Restricted Subsidiaries that are Domestic Subsidiaries, or any Extraordinary Receipt received by or paid to or for the account of the Borrower or any of its Restricted Subsidiaries that are Domestic Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received in cash or Cash Equivalents) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents or Indebtedness that is secured by a Lien that ranks pari passu with or junior to the Liens securing the Obligations), (B)

the out-of-pocket expenses incurred (or reasonably expected to be incurred) by the Borrower or such Restricted Subsidiary that is a Domestic Subsidiary in connection with such transaction, (C) taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction, including any taxes payable as a result of any gain recognized in connection therewith; *provided* that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall be a reduction of the Taxes previously taken into account under subclause (C) for purposes of redetermining Net Cash Proceeds and (D) any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP, including, without limitation, any working capital adjustments, escrows, earn-outs, and similar items in connection with such transaction, until such reserve is released at which point such amounts shall constitute Net Cash Proceeds.

“Non-Guarantor Debt” means Indebtedness incurred, created or assumed by Restricted Subsidiaries that are not Loan Parties.

“Non-Guarantor Debt Cap” means an amount equal to the greater of (x) \$114,000,000 and (y) 60.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b).

“Non-Recourse Debt” means Indebtedness:

(a) as to which neither the Borrower nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), or (b) is directly or indirectly liable as a guarantor or otherwise;

(b) default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would not permit upon notice, lapse of time or both any holder of any other Indebtedness (other than the Obligations) of the Borrower or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity; and

(c) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of the Borrower or any of its Restricted Subsidiaries.

“Note” means a promissory note made by the Borrower (x) in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit C-1 or (y) in favor of a Revolving Credit Lender evidencing Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form of Exhibit C-2.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent,

due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Offer Loans**” has the meaning specified in Section 10.06(b)(vii)(A).

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Original Revolving Credit Commitment**” means, as to each Revolving Credit Lender, its commitment in effect as of the Closing Date to make Original Revolving Credit Loans to the Borrower pursuant to Section 2.01(b) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Original Revolving Credit Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. As of the Closing Date, the aggregate amount of the Original Revolving Credit Commitments of all Revolving Credit Lenders is \$200,000,000.

“**Original Revolving Credit Facility**” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Original Revolving Credit Commitments at such time and the Credit Extensions made thereunder.

“**Original Revolving Credit Lender**” means, at any time, any Lender that has an Original Revolving Credit Commitment at such time or that has Original Revolving Credit Loans outstanding at such time.

“**Original Revolving Credit Loan**” means the Revolving Credit Loans made by the Revolving Credit Lenders to the Borrower under the Original Revolving Credit Commitments pursuant to Section 2.01(b).

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from one or more of the following: such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

“Other Revolving Commitments” means one or more Classes of revolving commitments hereunder that result from a Refinancing Amendment.

“Other Revolving Loans” means one or more Classes of revolving credit loans made pursuant to Other Revolving Commitments that result from a Refinancing Amendment.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing, mortgage or mortgage recording Taxes, any other excise or property Taxes, or similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document.

“Outstanding Amount” means (a) with respect to Term Loans and Revolving Credit Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans and Revolving Credit Loans, as the case may be, occurring on such date and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts, in each case, using the U.S. Dollar Equivalent of obligations denominated in an Alternative Currency.

“Parent Company” means BRBR so long as BRBR shall own, directly or indirectly, at least 10% of the outstanding non-Voting Stock or at least 10% of the outstanding Voting Stock of the Borrower, and/or any other Person who owns, directly or indirectly, at least 35% of the outstanding non-Voting Stock or at least 35% of the outstanding Voting Stock of the Borrower.

“Pari Passu Intercreditor Agreement” means an intercreditor agreement among the Administrative Agent and the other parties from time to time party thereto, substantially in the form of Exhibit I.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards and required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including, but not limited to, Multiple Employer Plans, Multiemployer Plans, defined benefit plans or defined contribution plans) that is maintained or is contributed to, or during the preceding five plan years has been maintained or contributed to, by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the Pension Funding Rules.

“Permitted Acquisition” means any investment by the Borrower or any Restricted Subsidiary in the form of acquisitions of all or substantially all of the business or a line of business or a separate operation (whether by the acquisition of capital stock, assets or any combination thereof) of any other Person if:

(a) the acquired entity, assets or operations shall be in the Permitted Business;

(b) the aggregate amount of acquisitions made by the Borrower and its Restricted Subsidiaries in Persons that do not become Loan Parties as a result of any such acquisition and all other Permitted Acquisitions closed on or after the Closing Date shall not exceed the greater of (i) \$75,000,000 and (ii) 40.00% of the Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b) after giving effect to all acquisitions whether closed prior to, on or after the Closing Date, but prior to giving effect to the proposed acquisition; and

(c) no Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) shall have occurred and be continuing.

“Permitted Business” means the growing, packaging, manufacturing, processing, licensing, distribution and/or sale of any product that is ingestible by a natural person or the provision of any service with respect thereto or a line of business reasonably related, complementary, synergistic or ancillary thereto or reasonable extensions thereof.

“Permitted Holder” means (1) Post or any of its Affiliates and (2) BRBR.

“Permitted Liens” means those Liens permitted pursuant to Section 7.01.

“Permitted Prior Liens” has the meaning specified in Section 5.18.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) such modification, refinancing, refunding, renewal or

extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (e) if such Indebtedness being modified, refinanced, refunded, renewed or extended is secured, the terms and conditions relating to collateral of any such modified, refinanced, refunded, renewed or extended indebtedness, taken as a whole, are not materially less favorable to the Loan Parties or the Lenders than the terms and conditions with respect to the collateral for the Indebtedness being modified, refinanced, refunded, renewed or extended, taken as a whole, and the Liens on any Collateral securing any such modified, refinanced, refunded, renewed or extended Indebtedness shall have the same (or lesser) priority relative to the Liens on the Collateral securing the Obligations and, if secured by the Collateral, the holders of such Indebtedness or a representative thereof shall be or become a party to a Pari Passu Intercreditor Agreement and (if then in effect) the Junior Lien Intercreditor Agreement (if such Indebtedness is secured by any or all of the Collateral on a pari passu basis (without regard to control of remedies) with the Obligations) or to the Junior Lien Intercreditor Agreement (if such Indebtedness is secured by any or all of the Collateral on a junior basis (without regard to the control of remedies) with the Obligations), (f) the terms and conditions (excluding as to collateral, subordination, interest rate and redemption premium) of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, shall not be materially less favorable to the Loan Parties than the Indebtedness being modified, refinanced, refunded, renewed or extended, taken as a whole, (g) if such Indebtedness being modified, refinanced, refunded, renewed or extended was unsecured, such modification, refinancing, refunding, renewal or extension shall also be unsecured and (h) such modification, refinancing, refunding, renewal or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed or extended.

“**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Platform**” has the meaning specified in [Section 6.02](#).

“**Post**” means Post Holdings, Inc.

“**Pounds Sterling**” and “**GBP**” means the lawful currency of the United Kingdom.

“**Prepayment Notice**” means a notice of the optional prepayment of Revolving Credit Loans or Term Loans pursuant to [Section 2.05\(a\)](#), which shall be substantially in the form of [Exhibit A-3](#).

“**Prime Rate**” means the rate of interest per annum determined from time to time by Credit Suisse AG, Cayman Islands Branch, to be its prime rate in effect at its principal office in New York City and notified to the Borrower in writing (the Prime Rate not being intended to be the lowest rate of interest charged by Credit Suisse AG, Cayman Islands Branch in connection with extensions of credit to debtors).

“**Pro Rata Obligations**” means the Loans and the Letters of Credit.

“**Pro Forma Financial Statements**” has the meaning specified in Section 4.01(j).

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Public Lender**” has the meaning specified in Section 6.02.

“**Qualified Equity Interests**” means any Equity Interests that are not Disqualified Equity Interests.

“**Qualified Receivables Transaction**” means any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any such Restricted Subsidiary may sell, convey or otherwise transfer to a Receivables Subsidiary (in the case of a transfer by the Borrower or any Restricted Subsidiary) or to any Special Purpose Vehicle (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any Receivables Program Assets (whether existing on the Closing Date or arising thereafter); *provided* that: (1) no portion of the Indebtedness or any other obligations (contingent or otherwise) of a Receivables Subsidiary or Special Purpose Vehicle (a) is Guaranteed by the Borrower or any Restricted Subsidiary (other than a Receivables Subsidiary), excluding Guarantees of obligations pursuant to Standard Securitization Undertakings, (b) is recourse to or obligates the Borrower or any Restricted Subsidiary (other than a Receivables Subsidiary) in any way other than pursuant to Standard Securitization Undertakings, or (c) subjects any property or asset of the Borrower or any Restricted Subsidiary (other than a Receivables Subsidiary), directly or indirectly, contingently or otherwise, to the satisfaction of obligations incurred in such transactions, other than pursuant to Standard Securitization Undertakings; (2) neither the Borrower nor any Restricted Subsidiary (other than a Receivables Subsidiary) has any material contract, agreement, arrangement or understanding with a Receivables Subsidiary or a Special Purpose Vehicle other than on terms no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower, other than fees payable in the ordinary course of business in connection with servicing accounts receivable and Standard Securitization Undertakings; and (3) the Borrower and its Restricted Subsidiaries (other than a Receivables Subsidiary) do not have any obligation to maintain or preserve the financial condition of a Receivables Subsidiary or a Special Purpose Vehicle or cause such entity to achieve certain levels of operating results other than Standard Securitization Undertakings.

“**Quarterly Financial Statements**” has the meaning specified in Section 6.01(b).

“**Ratio Calculation Date**” has the meaning specified in Section 1.09(b)(i).

“Receivables” means all rights of the Borrower or any of its Restricted Subsidiaries (other than a Receivables Subsidiary) to payments (whether constituting accounts, chattel paper, instruments, general intangibles or otherwise, and including the right to payment of any interest or finance charges), which rights are identified in the accounting records of the Borrower or such Restricted Subsidiary as accounts receivable.

“Receivables Documents” means: (1) one or more receivables purchase agreements, pooling and servicing agreements, credit agreements, agreements to acquire undivided interests or other agreements to transfer or obtain loans or advances against, or create a security interest in, Receivables Program Assets, in each case as amended, modified, supplemented or restated and in effect from time to time and entered into by the Borrower, a Restricted Subsidiary and/or a Receivables Subsidiary, and (2) each other instrument, agreement and other document entered into by the Borrower, a Restricted Subsidiary or a Receivables Subsidiary relating to the transactions contemplated by the agreements referred to in clause (1) above.

“Receivables Program Assets” means: (1) all Receivables which are described as being transferred by the Borrower, a Restricted Subsidiary or a Receivables Subsidiary pursuant to the Receivables Documents; (2) all Receivables Related Assets in respect of Receivables described in clause (1); and (3) all collections (including recoveries) and other proceeds of the assets described in the foregoing clauses.

“Receivables Program Obligations” means Indebtedness and other obligations owing in respect of notes, trust certificates, undivided interests, partnership interests or other interests sold, issued and/or pledged, or otherwise incurred, in connection with a Qualified Receivables Transaction; and related obligations of the Borrower, a Restricted Subsidiary or a Special Purpose Vehicle (including, without limitation, Standard Securitization Undertakings).

“Receivables Related Assets” means: (1) any rights arising under the documentation governing or relating to Receivables (including rights in respect of Liens securing such Receivables and other credit support in respect of such Receivables); (2) any proceeds of such Receivables and any lockboxes or accounts in which such proceeds are deposited; (3) spread accounts and other similar accounts (and any amounts on deposit therein) established in connection with a Qualified Receivables Transaction; (4) any warranty, indemnity, dilution and other intercompany claim arising out of Receivables Documents; and (5) other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable.

“Receivables Repurchase Obligation” means any obligation of the Borrower or a Restricted Subsidiary (other than a Receivables Subsidiary) in a Qualified Receivables Transaction to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a Receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the Borrower or a Restricted Subsidiary (other than a Receivables Subsidiary).

“Receivables Subsidiary” means a special purpose wholly-owned Subsidiary created by the Borrower or any Restricted Subsidiary in connection with the transactions contemplated by a Qualified Receivables Transaction, which Subsidiary engages in no activities other than those incidental to such Qualified Receivables Transaction and which is designated as a Receivables Subsidiary by the Borrower’s Board of Directors. Any such designation by the Board of Directors shall be evidenced by filing with the Administrative Agent of a board resolution of the Borrower giving effect to such designation and an officers’ certificate certifying, to the best of such officers’ knowledge and belief after consulting with counsel, that such designation, and the transactions in which the Receivables Subsidiary will engage, comply with the requirements of the definition of Qualified Receivables Transaction.

“Recipient” means the Administrative Agent, any Lender or any L/C Issuer, as applicable.

“Refinanced Debt” has the meaning specified in the definition of “Credit Agreement Refinancing Indebtedness”.

“Refinancing” has the meaning specified in Section 4.01(c).

“Refinancing Amendment” means an amendment, supplement, or joinder to this Agreement executed by the Borrower, the Administrative Agent, each Additional Refinancing Lender and each Lender that agrees to provide any portion of Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments or Other Revolving Loans, in each case in accordance with Section 2.17.

“Refinancing Facility” means, at any time, as the context may require, the aggregate amount of Refinancing Term Commitments and/or Other Revolving Commitments of a given Refinancing Series at such time and, in each case, but without duplication, the Credit Extensions made thereunder.

“Refinancing Series” means all Refinancing Term Loans, Refinancing Term Commitments, Other Revolving Commitments or Other Revolving Loans that are established pursuant to the same Refinancing Amendment (or any subsequent Refinancing Amendment to the extent such Refinancing Amendment expressly provides that the Refinancing Term Loans, Refinancing Term Commitments, Other Revolving Commitments or Other Revolving Credit Loans provided for therein are intended to be a part of any previously established Refinancing Series) and that provide for the same Effective Yield and, in the case of Refinancing Term Loans or Refinancing Term Commitments, amortization schedule.

“Refinancing Term Commitments” means one or more Classes of Term Commitments that are established to fund Refinancing Term Loans hereunder pursuant to a Refinancing Amendment.

“Refinancing Term Loan Borrowing” means a borrowing consisting of one or more simultaneous Refinancing Term Loans of the same Type under a Refinancing Facility and, in the case of Eurodollar Rate Loans, having the same Interest Period made pursuant to Section 2.17.

“Refinancing Term Loans” means one or more Classes of Term Loans that result from a Refinancing Amendment.

“Register” has the meaning specified in Section 10.06(c).

“Registration Statement” means the registration statement of BRBR on Form S-1, File No. 333-233867, as amended from time to time.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping or leaching of any Hazardous Material into the environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material).

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Credit Loans, a Committed Loan Notice or Conversion/Continuation Notice, as applicable and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“Required Facility Lenders” means, as of any date of determination, with respect to any Facility, Lenders having more than 50% of the sum of (a) the Total Outstandings under such Facility (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations under such Facility being deemed “held” by such Lender for purposes of this definition) and (b) the aggregate unused Commitments under such Facility; *provided* that the unused Commitments of, and the portion of the Total Outstandings under such Facility held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Facility Lenders.

“Required Lenders” means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Commitments; *provided* that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Required Revolving Credit Lenders” means, as of any date of determination, Revolving Credit Lenders holding more than 50% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; *provided* that the unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

“Required Term B Lenders” means, as of any date of determination, Term B Lenders holding more than 50% of the Term B Facility on such date; *provided* that the portion of the Term B Facility held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Term B Lenders.

“Responsible Officer” means the chief executive officer, president, chief financial officer, director of corporate finance, treasurer, assistant treasurer or controller of a Loan Party, and including solely for purposes of Section 4.01(a), the secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Indebtedness” has the meaning specified in Section 7.14.

“Restricted Payment” means any dividend, other distribution or other payment (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent of any thereof) or any option, warrant or other right to acquire any such dividend or other distribution or payment.

“Restricted Subsidiary” means any Subsidiary other than an Unrestricted Subsidiary.

“Revolving Credit Borrowing” means a borrowing consisting of one or more simultaneous Revolving Credit Loans of the same Class and Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made pursuant to Section 2.01(b).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its Original Revolving Credit Commitment and shall include, as the context may require, any Incremental Revolving Credit Commitments and Other Revolving Commitments of such Revolving Credit Lender.

“Revolving Credit Facility” means the collective reference to the Original Revolving Credit Facility and any additional revolving credit facilities resulting from Incremental Revolving Credit Commitments and Other Revolving Commitments and the Credit Extensions made thereunder, or, as the context may require, to any of such revolving credit facilities individually.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment at such time or that has Revolving Credit Loans or risk participations in L/C Obligations outstanding at such time.

“Revolving Credit Loan” has the meaning specified in Section 2.01(b) and shall include, as the context may require, any Incremental Revolving Loans or Other Revolving Loans.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, or Her Majesty’s Treasury of the United Kingdom.

“Sanctioned Country” means a country, territory or a government of a country or territory that is subject to Sanctions.

“Sanctioned Person” means (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, or Her Majesty’s Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“S&P” means S&P Global Inc., through its S&P Global Ratings division or any successor thereto.

“Same Day Funds” means (a) with respect to disbursements and payments in U.S. Dollars, immediately available funds and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be reasonably determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlements of international banking transactions in the relevant Alternative Currency.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Screen Rate” means, (i) in relation to a Loan denominated in U.S. Dollars or Pounds Sterling, the London Interbank Offered Rate administered by the ICE Benchmark Association Limited (or any other Person that takes over the administration of such rate) for the relevant currency and Interest Period and (ii) in relation to a Loan denominated in Euros, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period, in each case, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Administrative Agent may specify another page or service displaying the appropriate rate.

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any interest rate, currency or commodity Swap Contract permitted under this Agreement that is entered into by and between a Loan Party and any Hedge Bank.

“Secured Net Leverage Ratio” means, with respect to any Measurement Period, the ratio of (i) Consolidated Senior Secured Debt (which shall be calculated net of the Unrestricted Cash Amount) as of the last day of such Measurement Period to (ii) Consolidated EBITDA for such Measurement Period, in each case for the Borrower and its Restricted Subsidiaries.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuers, with respect to any Secured Cash Management Agreement, the Cash Management Banks, with respect to any Secured Hedge Agreement, the Hedge Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.

“Solvent” and **“Solvency”** mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Special Purpose Vehicle” means a trust, partnership or other special purpose Person established by the Borrower and/or any of its Restricted Subsidiaries to implement a Qualified Receivables Transaction.

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the applicable L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; *provided* that the

Administrative Agent or the applicable L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the applicable L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; *provided further* that the applicable L/C Issuer may use such spot rate quoted on the date as of which any foreign exchange computation is to be made in the case of any Letter of Credit denominated in an Alternative Currency.

“**Standard Securitization Undertakings**” means representations, warranties, covenants, performance guarantees and indemnities entered into by the Borrower or any Restricted Subsidiary of the Borrower which, in the good faith judgment of the board of directors of the appropriate company, are reasonably customary in an accounts receivable transaction, including any Receivables Repurchase Obligation.

“**Statutory Reserve Rate**” means, a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the arithmetic mean, taken over each day in such Interest Period, of the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Administrative Agent is subject with respect to the Eurodollar Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” (as such term is defined in Regulation D of the FRB)). Such reserve percentages shall include those imposed pursuant to such Regulation D. Without limiting the effect of the foregoing, the Statutory Reserve Rate shall reflect any other reserves required to be maintained by such member banks with respect to (a) any category of liabilities which includes deposits by reference to which the applicable Eurodollar Rate or any other interest rate of a Loan is to be determined or (b) any category of extensions of credit or other assets which include Eurodollar Rate Loans, Eurodollar Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Stockholders’ Equity**” means, as of any date of determination, consolidated stockholders’, partner or member equity of the Borrower and its Restricted Subsidiaries as of that date determined in accordance with GAAP.

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

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other similar master agreement relating to a transaction described in clause (a) (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Tax and Related Distributions” means, without duplication,

(a) for any taxable period for which the Borrower is a member of a consolidated, combined, unitary or similar tax group for U.S. federal and/or applicable state or local tax purposes, payments to discharge the consolidated, combined, unitary or similar Tax liabilities of such tax group when and as due, to the extent such liabilities are attributable to the income of the Borrower and/or any Restricted Subsidiary of Borrower (or any Unrestricted Subsidiary of the Borrower to the extent such Unrestricted Subsidiary has distributed a corresponding amount to the Borrower or a Restricted Subsidiary), taking into account any carryovers of losses, excess interest deductions, and any available credits, in each case incurred on or following the Closing Date; provided that for each taxable period the amount of any such payment shall not be greater than the amount of such taxes that are reasonably expected to be due and payable by the Borrower and such Subsidiaries if the Borrower and such Subsidiaries filed a consolidated, combined, unitary or similar type tax return with the Borrower as the consolidated parent;

(b) any payment made by the Borrower (including, without limitation, any amounts treated as being paid on behalf of BRBR) pursuant to the Tax Matters Agreement or the Tax Receivable Agreement (in each case as in effect on the date of this Agreement, or as amended, modified or restated from time to time in a manner not materially adverse to the interests of the Lenders), other than any payments described in Article IV of the Tax Receivable Agreement; or

(c) so long as the Borrower is properly treated as a partnership or other “pass-through” entity for United States federal income Tax purposes, any payments made to any direct or indirect owner (or former owner) of the Borrower (and including for the avoidance of doubt, amounts paid to BRBR to satisfy its obligations under the Tax Receivable Agreement (other than any payments described in Article IV of the Tax Receivable Agreement)) pursuant to Section 5.03(e) or Section 9.01(d) of the Borrower Operating Agreement (in the case of the Tax Receivable Agreement and the Borrower Operating Agreement, as in effect on the date of this Agreement, or as amended, modified or restated from time to time in a manner not materially adverse to the interests of the Lenders).

“**Tax Matters Agreement**” means that certain Tax Matters Agreement by and among Post, the Borrower, and BRBR, dated as of October 21, 2019, as the same may be as the same may be amended, modified, supplemented, restated or replaced from time to time.

“**Tax Receivable Agreement**” means that certain Tax Receivable Agreement by and among Post, the Borrower, and BRBR, dated as of October 21, 2019, as the same may be as the same may be amended, modified, supplemented, restated or replaced from time to time.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term B Borrowing**” means a borrowing consisting of one or more simultaneous Term B Loans of the same Type under the Term B Facility and, in the case of Eurodollar Rate Loans, having the same Interest Period made pursuant to Section 2.01(a).

“**Term B Commitment**” means, as to each Term B Lender, its obligation to make Term B Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term B Lender’s name on Schedule 2.01 under the caption “Term B Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term B Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. As of the Closing Date, the aggregate amount of the Term B Commitments of the Term B Lenders is \$700,000,000.

“**Term B Facility**” means, at any time, (a) prior to the funding of the Term B Loans on the Closing Date, the aggregate amount of the Term B Commitments at such time and (b) thereafter, the aggregate principal amount of the Term B Loans of all Term B Lenders outstanding at such time.

“**Term B Lender**” means (a) prior to the funding of the Term B Loans on the Closing Date, any Lender that has a Term B Commitment at such time and (b) thereafter, any Lender that holds Term B Loans at such time.

“**Term B Loan**” means a loan made by any Term B Lender under the Term B Facility pursuant to Section 2.01(a).

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Class and Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the applicable Term Lenders.

“Term Commitment” means, as to each Term Lender, its Term B Commitment, and, if the context so requires, its commitment to make other Term Loans pursuant to a Joinder Agreement or a Refinancing Amendment, as applicable.

“Term Lender” means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

“Term Loan” means a Term B Loan, Incremental Term Loan or Refinancing Term Loan, individually or collectively as the context may require.

“Term SOFR” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Threshold Amount” means \$65,000,000.

“Total Net Leverage Ratio” means, with respect to any Measurement Period, the ratio of (a) Consolidated Funded Indebtedness (which shall be calculated net of the Unrestricted Cash Amount) as of the last day of such Measurement Period to (b) Consolidated EBITDA for the most recently completed Measurement Period, in each case, for the Borrower and its Restricted Subsidiaries.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Total Revolving Credit Outstandings” means the aggregate Outstanding Amount of all Revolving Credit Loans and L/C Obligations.

“Trade Date” has the meaning specified in [Section 10.06\(h\)](#).

“Transactions” means, collectively, (a) the Active Nutrition Transaction, (b) the Refinancing, (c) the entering into by the Borrower and the other Loan Parties of the Loan Documents to which they are or are intended to be a party, (d) any initial Credit Extensions on the Closing Date and (e) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“Transformative Acquisition” means any Permitted Acquisition by the Borrower or any Restricted Subsidiary that (i) is not permitted by the terms of the Loan Documents immediately prior to the consummation of such acquisition, (ii) if permitted by the terms of the Loan Documents immediately prior to the consummation of such acquisition, would not provide the Borrower and the other Restricted Subsidiaries with adequate flexibility under the Loan Documents for the continuation and/or expansion of their combined operations following such consummation, as determined by the Borrower acting in good faith or (iii) results in a refinancing of the Revolving Credit Facility or the Term B Facility that involves an upsizing of the Revolving Credit Facility or the Term B Facility in connection with such acquisition.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**Unadjusted Benchmark Replacement**” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unreimbursed Amount**” has the meaning specified in Section 2.03(c)(i).

“**Unrestricted Cash Amount**” means, as of any date of determination, the aggregate amount of (i) unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries and (ii) cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries restricted in favor of, or pledged to, the Administrative Agent, any Lender or any Issuing Bank (in each case, in its capacity as such) whether or not held in an account pledged to the Administrative Agent, any Lender or any Issuing Bank.

“**Unrestricted Subsidiary**” means any Subsidiary of the Borrower that is designated by the Borrower as an Unrestricted Subsidiary in accordance with Section 6.17, but only to the extent that such Subsidiary:

(a) has no Indebtedness other than Non-Recourse Debt;

(b) is not party to any agreement, contract, arrangement or understanding with the Borrower or any Restricted Subsidiary of the Borrower unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Borrower;

(c) is a Person with respect to which neither the Borrower nor any of its Restricted Subsidiaries has any direct or indirect obligation (x) to subscribe for additional Equity Interests or (y) to maintain or preserve such Person’s financial condition or to cause such Person to achieve any specified level of operating results; and

(d) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Borrower or any of its Restricted Subsidiaries unless such guarantee or credit support is released upon its designation as an Unrestricted Subsidiary.

“U.S. Dollar” and “\$” mean lawful money of the United States.

“U.S. Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in U.S. Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in U.S. Dollars as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Valuation Date) for the purchase of U.S. Dollars with such Alternative Currency.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” means a certificate substantially in the form of any of Exhibits H1 through H4, as the context requires.

“Valuation Date” means (i) the date two Business Days prior to the making, continuing or converting of any Revolving Credit Loan or the date of issuance, amendment or continuation of any Letter of Credit, (ii) the first Business Day of each calendar month, (iii) any other date reasonably designated by the Administrative Agent or an L/C Issuer in order to reasonably assure a correct exchange rate or (iv) any date that is as otherwise expressly provided for herein.

“Voting Stock” means, with respect to any Person, the Equity Interests of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the then outstanding principal amount of such Indebtedness; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended (the “Applicable Indebtedness”), the effect of any prepayments made on such Applicable Indebtedness prior to the date of the applicable modification, refinancing, refunding, renewal, replacement or extension shall be disregarded.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write down and conversion powers of such EEA Resolution Authority from time to time under the Bail-in Legislation for the applicable EEA Member Country, which write down and conversion powers are described in the EU Bail-in Legislation Schedule.

“Withholding Agent” means any Loan Party and the Administrative Agent.

Section 1.02 *Other Interpretive Provisions*. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Unless the context otherwise requires, any reference to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, Restricted Subsidiary, Unrestricted Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

Section 1.03 *Accounting Terms*. (a) *Generally*. Subject to Section 1.03(b), all accounting terms not specifically or completely defined herein shall be construed in conformity with GAAP, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time and applied in a manner consistent with that used

in preparing the Closing Annual Financial Statements, except as otherwise specifically prescribed herein and except for any differences arising because the Closing Annual Financial Statements do not take into account BRBR and the transactions occurring on the Closing Date; *provided* that if at any time a change in GAAP occurs that would result in a change to the method of accounting for obligations relating to a lease that was accounted for by a Person as an operating lease as of September 30, 2019 (or any similar lease entered into after September 30, 2019 by such Person), such obligations shall be accounted for as obligations relating to an operating lease and not as a Capital Lease.

(b) *Changes in GAAP.* If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein.

(c) Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

Section 1.04 *Rounding.* Any financial ratios required to be maintained or complied with by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 *Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.06 *Letter of Credit Amounts.* With respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.07 *Currency Equivalents Generally; Change of Currency*. For purposes of this Agreement and the other Loan Documents (other than Article 2, Article 9 and Article 10 hereof), where the permissibility of a transaction or determinations of required actions or circumstances depend upon compliance with, or are determined by reference to, amounts stated in U.S. Dollars, such amounts shall be deemed to refer to U.S. Dollars or U.S. Dollar Equivalents and any requisite currency translation shall be based on the Spot Rate in effect on the Business Day of such transaction or determination. Notwithstanding the foregoing, for purposes of determining compliance with Sections 7.01, 7.02 and 7.03 with respect to any amount of Liens, Indebtedness or Investment in currencies other than U.S. Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Lien is created, Indebtedness is incurred or Investment is made. Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Borrower's consent (not to be unreasonably withheld) to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

Section 1.08 *Timing of Payment and Performance*. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.09 *Certain Calculations*.

(a) All pro forma calculations permitted or required to be made by the Borrower or any Restricted Subsidiary pursuant to this Agreement shall include only those adjustments that have been certified by a Responsible Officer of the Borrower as having been prepared in good faith based upon reasonably detailed written assumptions believed by the Borrower at the time of preparation to be reasonable and which are reasonably foreseeable. Any ratio calculated hereunder that includes Consolidated EBITDA shall look to Consolidated EBITDA for the most recently completed Measurement Period.

(b) The pro forma Secured Net Leverage Ratio and Total Net Leverage Ratio shall be calculated as follows:

(i) in the event that the Borrower or any Restricted Subsidiary incurs, assumes, guarantees, redeems, retires or extinguishes any Indebtedness subsequent to the last day of the Measurement Period for which such pro forma ratio is being calculated but on or prior to the date of the event for which the calculation of such pro forma ratio is being made (a "**Ratio Calculation Date**"), then such pro forma ratio shall be calculated as if such incurrence, assumption, guarantee, redemption, retirement or extinguishment of Indebtedness (and all other incurrences, assumptions, guarantees, redemptions, retirements or extinguishments of Indebtedness consummated since the last day of the applicable Measurement Period but on or prior to the Ratio Calculation Date) had occurred at the last day of the applicable Measurement Period; *provided* that (i) in the case of any incurrence of Indebtedness or establishment of any revolving credit or delayed draw commitments,

(x) a borrowing of the maximum amount of Indebtedness available under such revolving credit or delayed draw commitments shall be assumed and (y) the cash proceeds of such incurred Indebtedness shall be excluded from amounts that may be netted in the calculation of the pro forma Secured Net Leverage Ratio or Total Net Leverage Ratio, as applicable and (ii) the pro forma Consolidated Interest Charges for the applicable Measurement Period shall be calculated assuming such Indebtedness had been outstanding or repaid, as the case may be, since the first day and through the end of the applicable Measurement Period (taking into account any interest rate Swap Contracts applicable to such Indebtedness);

(ii) in the event that any Permitted Acquisitions or other permitted Investments in the nature of an acquisition are made subsequent to the last day of the applicable Measurement Period for which such pro forma ratio is being calculated but on or prior to the Ratio Calculation Date, then Consolidated EBITDA shall be (x) increased by an amount equal to the Consolidated EBITDA attributable to the property or Investment that is the subject of such Permitted Acquisition or other permitted Investment in the nature of an acquisition, in each case assuming such Permitted Acquisition or other permitted Investment in the nature of an acquisition had been made on the first day of the applicable Measurement Period and (y) otherwise calculated as set forth in the third paragraph of the definition of "Consolidated EBITDA" on a Pro Forma Basis;

(iii) in the event that Dispositions are made subsequent to the last day of the applicable Measurement Period for which such pro forma ratio is being calculated but on or prior to the relevant Ratio Calculation Date, then Consolidated EBITDA shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Disposition or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto, in each case assuming such Disposition had been made on the first day of the applicable Measurement Period; and

(iv) for the avoidance of doubt, the cash used in connection with any transaction specified above shall be excluded from amounts that may be netted in the calculation of pro forma Secured Net Leverage Ratio or Total Net Leverage Ratio, as applicable.

(c) Notwithstanding anything to the contrary in this Agreement, solely for the purpose of (A) measuring the relevant financial ratios and basket availability or pro forma compliance with any covenant with respect to the incurrence of any Indebtedness (including any Incremental Term Loans, Incremental Revolving Loans, Incremental Term Loan Commitments or Incremental Revolving Credit Commitments) or Liens or the making of any Investments (including the determination of whether an acquisition is a Permitted Acquisition) or Dispositions or the designation of any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or (B) other than in connection with the incurrence of any Incremental Revolving Credit Commitments, any Other Revolving Commitments or any Revolving Credit Loans, determining compliance with representations and warranties or the occurrence of any Default or Event of Default, in each case, in connection with a Limited Condition Acquisition or the incurrence or payment of Indebtedness or incurrence of Liens in connection therewith, if the Borrower has made an LCA Election with respect to such Limited Condition Acquisition, the date of determination of

whether any such action is permitted hereunder shall be deemed to be the date on which the definitive agreements for such Limited Condition Acquisition are entered into (the “**LCA Test Date**”), and if, after giving effect on a Pro Forma Basis to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith as if they had occurred at the beginning of the most recently completed Measurement Period ending prior to the LCA Test Date, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such financial ratio or basket, such financial ratio or basket shall be deemed to have been complied with. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any financial ratio or basket availability on or following the relevant LCA Test Date and prior to the earlier of (x) the date on which such Limited Condition Acquisition is consummated or (y) the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such financial ratio or basket availability shall be calculated (and tested) on (A) a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence or payment of Indebtedness (and the use of proceeds of such Indebtedness) or the incurrence of any Liens in connection therewith) have been consummated until such time as the applicable Limited Condition Acquisition has actually closed or the definitive agreement with respect thereto has been terminated and (B) solely with respect to the making of any Restricted Payments, on a standalone basis without giving effect to such Limited Condition Acquisition and the other transactions in connection therewith.

(d) For purposes of determining compliance with Sections 7.01, 7.02, 7.03, 7.06 and 7.14, with respect to any grant of any Lien, the making of any Investment or Restricted Payment, the incurrence of any Indebtedness or the prepayment, redemption, purchase, defeasement or satisfaction of Restricted Indebtedness (each, a “**Covenant Transaction**”) in reliance on a “basket” that makes reference to a percentage of Consolidated EBITDA, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in the amount of Consolidated EBITDA occurring after the time such Covenant Transaction is incurred, granted or made in reliance on such provision.

(e) For purposes of calculating any “net” ratio test utilized in any debt incurrence test (including any amounts permitted to be incurred pursuant to Section 2.14 and Section 7.03(s)), such ratio shall be calculated after giving effect to any such incurrence on a pro forma basis, and, in each case, with respect to any revolving credit or delayed draw commitments being established utilizing a debt incurrence test (including any Incremental Revolving Commitment), assuming a borrowing of the maximum amount of such revolving credit or delayed draw commitment (but for the avoidance of doubt, no other previously established revolving commitment), and such calculation shall be made excluding the cash proceeds from such incurrence from the amount of cash and Cash Equivalents that may be netted in the calculation of pro forma Secured Net Leverage Ratio or Total Net Leverage Ratio, as applicable.

(f) For purposes of determining compliance at any time with Section 7.01, Section 7.02, Section 7.03, Section 7.06 and Section 7.14, in the event that any Lien, Indebtedness, Investment, Restricted Payment or payment of Restricted Indebtedness, as applicable, meets the criteria of more than one of the categories of transactions within such covenant or items permitted pursuant to any clause of such Sections 7.01, 7.02, 7.03, 7.06 and 7.14, the Borrower, in its sole

discretion, from time to time, may classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any one category; provided that, notwithstanding the foregoing, Liens of the nature described in Sections 7.01(a) and (y) may only be incurred and exist under such respective sections, Indebtedness of the nature described in Section 7.03(d) may only be incurred and exist under such Section and Incremental Equivalent Debt may only be incurred under Section 7.03(s).

Section 1.10 *Rates*. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or with respect to any comparable or successor rate thereto.

ARTICLE 2. THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01 *The Loans*.

(a) Subject to the terms and conditions set forth herein, each Term B Lender severally agrees to make a single loan to the Borrower on the Closing Date in an amount not to exceed such Term B Lender’s Term B Commitment. The Term B Borrowing shall consist of Term B Loans made simultaneously by the Term B Lenders in accordance with their respective Applicable Percentage of the Term B Facility. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term B Loans shall be denominated in Dollars and may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(b) Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans (each such loan, a “**Revolving Credit Loan**”) to the Borrower in U.S. Dollars or an Alternative Currency, in each case, from time to time, on any Business Day during the applicable Availability Period for the Revolving Credit Facility under which such Revolving Credit Lender has a Revolving Credit Commitment, in an aggregate amount not to exceed at any time outstanding the amount of such Revolving Credit Lender’s Revolving Credit Commitment; *provided, however,* that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments at such time and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender plus such Revolving Credit Lender’s Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Revolving Credit Lender’s Revolving Credit Commitment; *provided, further,* that solely for purposes of Revolving Credit Loans made on the Closing Date, amounts available to be drawn under the Revolving Credit Facility shall not be greater than \$100,000,000. Within the limits of each Revolving Credit Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Credit Loans (x) denominated in U.S. Dollars may be Base Rate Loans or Eurodollar Rate Loans and (y) denominated in an Alternative Currency shall be Eurodollar Rate Loans, in each case, as further provided herein.

(a) Each Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by "pdf" or similar electronic format, in the form of a Committed Loan Notice or a Conversion/Continuation Notice, as applicable (each, a "**Notice**"). Each such Notice must be received by the Administrative Agent not later than (i) 11:00 a.m. three Business Days prior to the requested date of any Borrowing or continuation of Eurodollar Rate Loans denominated in Dollars or of any conversion of or conversion to Eurodollar Rate Loans denominated in Dollars, (ii) 11:00 a.m. four Business Days prior to the requested day of any Borrowing or continuation of Eurodollar Rate Loans denominated in any Alternative Currency (iii) 11:00 a.m. on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a minimum principal amount of \$5,000,000 and whole multiples of \$1,000,000 in excess thereof. Except as provided in Section 2.03(c), each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Each Notice shall specify, as applicable, (1) whether the Borrower is requesting a Term Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, and in each case, the Class of the relevant Loans and Borrowings, (2) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (3) the principal amount of Loans to be borrowed, converted or continued, (4) the Type of Loans to be borrowed or to which existing Term Loans or Revolving Credit Loans are to be converted, (5) if applicable, the duration of the applicable Interest Period with respect thereto and (6) in the case of Revolving Credit Borrowings or Revolving Credit Loans, the currency of the Loans to be borrowed, continued or converted (*provided*, that if the Borrower shall fail to so specify, the applicable Revolving Credit Borrowing shall be denominated in U.S. Dollars). With respect to Loans denominated in U.S. Dollars, if the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice or Conversion/Continuation Notice, as applicable, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. If the Borrower fails to give a timely notice requesting a continuation of Eurodollar Rate Loans (other than Loans denominated in U.S. Dollars), then the Interest Period applicable to the Loans will be deemed to be an Interest Period of one month. No Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be repaid or prepaid in the original currency of such Loan and reborrowed in such other currency. The Term B Loan funded on the Closing Date shall be denominated in U.S. Dollars.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable Term Loans or Revolving Credit Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall

notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 12:00 p.m., in the case of any Eurodollar Rate Loan or Base Rate Loan on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (or, if such Borrowing is to be made on the Closing Date, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; *provided, however*, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Revolving Credit Lenders or the Required Term B Lenders, as applicable.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect at any one time.

Section 2.03 *Letters of Credit.*

(a) *The Letter of Credit Commitment.* (i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in U.S. Dollars or, if the applicable L/C Issuer shall agree, in one or more Alternative Currencies for the account of the Borrower (or any of its Restricted Subsidiaries so long as the Borrower is a joint and several co-applicant, and references to the "Borrower" in this Section 2.03 and elsewhere in this Agreement with respect to requests for Letters of Credit (including renewals or continuations thereof) shall be deemed to include any such Restricted Subsidiary), and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit issued by it; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower and any drawings thereunder; *provided* that after giving effect to any L/C Credit Extension with respect to

any Letter of Credit, (w) the Total Revolving Credit Outstandings shall not exceed the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments at such time, (x) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, (y) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit and (z) the aggregate amount of L/C Obligations owing to an L/C Issuer shall not exceed the amount set forth opposite such L/C Lender's name on Schedule 2.01 under the caption "Letter of Credit Commitments". Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(i) No L/C Issuer shall issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Revolving Credit Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless such Letter of Credit is Cash Collateralized no less than fifteen (15) days prior to the Letter of Credit Expiration Date at 105% of the face amount thereof.

(ii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, such Letter of Credit is in an initial stated amount less than \$100,000;

(D) except as otherwise agreed by such L/C Issuer, such Letter of Credit is to be denominated in a currency other than U.S. Dollars or an Alternative Currency; or

(E) any Revolving Credit Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Revolving Credit Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to any required adjustment pursuant to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from the Letter of Credit then proposed to be issued and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iii) No L/C Issuer shall amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(iv) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(v) Each L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article 9 hereof with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the Issuer Documents pertaining to such Letters of Credit as fully as if the term "**Administrative Agent**" as used in Article 9 hereof included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuers.

(b) *Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.* (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable L/C Issuer in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the applicable L/C Issuer not later than 12:00 p.m. at least three Business Days (or such later date and time as the applicable L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably

satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; (H) the requested currency of the requested Letter of Credit (which shall be U.S. Dollars or an Alternative Currency); *provided* that if the currency is not specified, the requested currency of the requested Letter of Credit shall be deemed to be U.S. Dollars; and (I) such other matters as the applicable L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the applicable L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the applicable L/C Issuer such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the applicable L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent the pertinent details of the requested Letter of Credit. Unless the applicable L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article 4 hereof shall not then be satisfied, then, subject to the terms and conditions hereof, the applicable L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the applicable L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage *times* the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); *provided* that, unless otherwise agreed to by the applicable L/C Issuer, any such Auto-Extension Letter of Credit must permit the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to the applicable L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but

may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date unless such Letter of Credit is Cash Collateralized at 105% of the face amount thereof in accordance with this Agreement; *provided, however*, that the applicable L/C Issuer shall not permit any such extension if (A) the applicable L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (i) or (ii) of Section 2.03(a) or otherwise), or (B) it has received notice (in writing) on or before the day that is seven days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Revolving Credit Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the applicable L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse the applicable L/C Issuer in U.S. Dollars. In the case of any such reimbursement in U.S. Dollars of a drawing as of the applicable Valuation Date under a Letter of Credit denominated in an Alternative Currency, the applicable L/C Issuer shall notify the Borrower of the U.S. Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the next Business Day following any payment by the applicable L/C Issuer under a Letter of Credit (or on the second Business Day following any payment by the applicable L/C Issuer if such notice is delivered to the Borrower after 11:00 a.m. on the date of any such payment) (each such applicable date, an “**Honor Date**”), the Borrower shall reimburse the applicable L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing as provided in this Section 2.03(c). If the Borrower fails to so reimburse the applicable L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (in U.S. Dollars in the case of a Letter of Credit denominated in U.S. Dollars, and expressed, in the case of a Letter of Credit denominated in an Alternative Currency, in U.S. Dollars in the amount of the U.S. Dollar Equivalent thereof (the “**Unreimbursed Amount**”), and the amount of such Revolving Credit Lender’s Applicable Revolving Credit Percentage thereof. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice).

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Revolving Credit Percentage of the Unreimbursed Amount not later than 12:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer in U.S. Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice) cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Credit Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Credit Lender's Applicable Revolving Credit Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Letters of Credit issued by it, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the applicable L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by the applicable L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), the applicable L/C Issuer shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the applicable L/C Issuer at a rate per annum equal to the greater of the Federal Funds Effective Rate and a rate determined by the applicable L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the applicable L/C Issuer in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Credit Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the applicable L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Revolving Credit Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the applicable L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will promptly distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the applicable L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of the applicable L/C Issuer its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Revolving Credit Lender, at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Revolving Credit Lenders under this clause shall survive the payment in full of the Obligations, the termination of the Commitments and the termination of this Agreement.

(e) *Obligations Absolute*. The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;
- (v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally; or
- (vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any of its Subsidiaries.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the applicable L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid or such claim arises from the applicable L/C Issuer's gross negligence or willful misconduct (as determined by a final non-appealable order of a court of competent jurisdiction).

(f) *Role of L/C Issuer.* Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Revolving Credit Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct (as determined by a final non-appealable order of a court of competent jurisdiction); or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(e); *provided, however*, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and an L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which are determined by a final non-appealable order of a court of competent jurisdiction to have been caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, any L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuers shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) *Applicability of ISP.* Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(h) *Letter of Credit Fees.* The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage of the applicable Revolving Credit Facility, in U.S. Dollars, a Letter of Credit fee (the "**Letter of Credit Fee**") for each Letter of Credit equal to the Applicable Rate of the applicable Revolving Credit Facility times the U.S. Dollar Equivalent determined as of the last Business Day of each March, June, September and December of the daily amount available to be drawn under such Letter of Credit; *provided* that any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable L/C Issuer shall be payable,

to the maximum extent permitted by applicable Law, to the other Revolving Credit Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such fee, if any, payable to the applicable L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.* The Borrower shall pay directly to the applicable L/C Issuer for its own account, in U.S. Dollars, a fronting fee with respect to each Letter of Credit issued by such L/C Issuer, at a rate per annum of 0.125%, computed on the U.S. Dollar Equivalent determined as of the last Business Day of each March, June, September and December of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the last Business Day of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the applicable L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) *Conflict with Issuer Documents.* In the event of any conflict or inconsistency between the terms hereof and the terms of any Issuer Document, the terms hereof shall control. To the extent any defaults, representations, or covenants contained in any Issuer Documents are more restrictive than the Events of Default, representations, or covenants contained herein, the Events of Default, representations and covenants herein shall control.

(k) *Provisions Related to Letters of Credit in respect of Other Revolving Commitments.* If the Letter of Credit Expiration Date in respect of any Class of Revolving Credit Commitments occurs prior to the expiry date of any Letter of Credit, then (i) if consented to by the L/C Issuer which issued such Letter of Credit, if one or more other Classes of Revolving Credit Commitments in respect of which the Letter of Credit Expiration Date shall not have so occurred are then in effect, such Letters of Credit for which the applicable L/C Issuer has consented shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Credit Lenders to purchase participations therein and to make Revolving Credit Loans and payments in respect thereof pursuant to Sections 2.03(c) and 2.03(d)) under (and ratably participated in by Lenders pursuant to) the Revolving Credit Commitments in respect of such non-

terminating Classes up to an aggregate amount not to exceed the aggregate amount of the unutilized Revolving Credit Commitments thereunder at such time and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall Cash Collateralize any such Letter of Credit in accordance with the terms hereof. Upon the maturity date of any Class of Revolving Credit Commitments, the Letter of Credit Sublimit may be reduced as agreed between the L/C Issuers and the Borrower, without the consent of any other Person.

(l) *Additional L/C Issuers.* The Borrower may, at any time and from time to time, designate one or more additional Revolving Credit Lenders or Affiliates of Revolving Credit Lenders to act as an L/C Issuer under the terms of this Agreement, with the consent of each of the Administrative Agent (which consent shall not be unreasonably withheld) and such Revolving Credit Lender(s) or Affiliate thereof. Any Revolving Credit Lender or Affiliate thereof designated as an L/C Issuer pursuant to this Section 2.03(l) shall be deemed to be the L/C Issuer with respect to Letters of Credit issued or to be issued by such Revolving Credit Lender or Affiliate thereof, and all references herein and in the other Loan Documents to the term "L/C Issuer" shall, with respect to such Letters of Credit, be deemed to refer to such Revolving Credit Lender or Affiliate thereof in its capacity as L/C Issuer thereof, as the context shall require.

(m) *Reporting.* Not later than the third Business Day following the last day of each calendar month (or at such other intervals as the Administrative Agent and the applicable L/C Issuer shall agree), each L/C Issuer shall provide to the Administrative Agent a schedule of the Letters of Credit issued by it, in form and substance reasonably satisfactory to the Administrative Agent, showing the date of issuance of each Letter of Credit, the account party, the original face amount (if any), the expiration date, and the reference number of any Letter of Credit outstanding at any time during such month, and showing the aggregate amount (if any) paid or payable by the Borrower to such L/C Issuer during such month.

Section 2.04 [Reserved].

Section 2.05 *Prepayments.*

(a) *Optional.* The Borrower may, upon notice in the form of a Prepayment Notice delivered to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans or Revolving Credit Loans in whole or in part without premium or penalty (other than, (x) in the case of any Eurodollar Rate Loan, any amounts required pursuant to Section 3.05, (y) any amounts required pursuant to Section 2.05(b)(ix) and (z), in the case of any Incremental Term Loans, any premium contained in the applicable Joinder Agreement); *provided* that (A) such notice must be received by the Administrative Agent not later than 12:00 p.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans denominated in U.S. Dollars, (2) five Business Days prior to any date of prepayment of Eurodollar Rate Loans denominated in any Alternative Currency and (3) one Business Day prior to any date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify (i) the date and amount of such prepayment and (ii) the Type(s) of Loans to be prepaid

and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any voluntary prepayment of a Loan pursuant to this Section 2.05(a) shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts if required pursuant to Section 3.05. Each such prepayment of any outstanding Term Loans pursuant to Section 2.05(a) shall be applied as between Facilities as directed by the Borrower and, within any given Facility, shall be applied as directed by the Borrower to the installments thereof (or, if no such direction is provided, in direct order of maturity). Subject to Section 2.16, all payments made pursuant to this Section 2.05(a) shall be applied on a pro rata basis to each Lender holding Loans of the applicable Facility being prepaid in accordance with the principal amount of the applicable Term Loans held thereby.

(b) *Mandatory*.

(i) Upon the incurrence or issuance by the Borrower or any of its Restricted Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.03 (except Credit Agreement Refinancing Indebtedness)), the Borrower shall prepay (or Cash Collateralize, as applicable) an aggregate principal amount of Pro Rata Obligations equal to 100% of the gross cash proceeds received by the Borrower or any of its Restricted Subsidiaries from any such Indebtedness less all reasonable and customary out-of-pocket legal, underwriting and other fees, costs and expenses incurred or reasonably anticipated to be incurred within 90 days thereof in connection therewith, within one Business Day following receipt thereof by the Borrower or such Restricted Subsidiary, (such prepayments (or Cash Collateralization) to be applied as set forth in clauses (v) and (vii) below).

(ii) In the event that (a) there shall be Consolidated Excess Cash Flow for any Fiscal Year (commencing with the Fiscal Year ending September 30, 2020) and (b) there are any Term Loans outstanding at the end of such Fiscal Year, the Borrower shall, no later than ninety-five (95) days after the end of such Fiscal Year, prepay an aggregate principal amount of the Term Loans equal to (A) the ECF Percentage of such Consolidated Excess Cash Flow for such Fiscal Year less (B) the sum of (1) all voluntary prepayments of Term Loans, loans under any Incremental Equivalent Debt, Revolving Credit Loans and/or loans under other Indebtedness, in each case, secured on a pari passu basis with the Liens securing the Obligations hereunder, in each case, made during such Fiscal Year or after the end of such Fiscal Year and prior to the date such Excess Cash Flow prepayment is due (in the case of any such Revolving Credit Loans or other revolving Indebtedness prepaid, to the extent accompanied by a permanent reduction in the relevant commitment, and in the case of all such prepayments, to the extent that such prepayments are financed with internally generated cash of the Borrower or the sale or issuance of Equity Interests in the Borrower (and not from the proceeds of Indebtedness) and, in the case of all such prepayments made after the end of such Fiscal Year and prior to the date such Excess Cash Flow prepayment is due, provided that such amount so deducted shall not be deducted from

the Excess Cash Flow Amount in any subsequent period) and (2) repurchases of Term Loans purchased pursuant to Section 10.06(b)(vii), limited to the actual purchase price paid in cash and to the extent financed with internally generated cash of the Borrower or the sale or issuance of Equity Interests in the Borrower (and not from the proceeds of Indebtedness), in each case, made during such Fiscal Year or after the end of such Fiscal Year and prior to the date such Excess Cash Flow prepayment is due and, in the case of all such repurchases made after the end of such Fiscal Year and prior to the date such Excess Cash Flow prepayment is due, provided that such amount so deducted shall not be deducted from the Excess Cash Flow Amount in any subsequent period (such amount, the “**Excess Cash Flow Amount**”) to be applied as set forth in clauses (v) and (vii) below); provided that prepayments pursuant to this Section 2.05(b)(ii) shall only be required to the extent the Excess Cash Flow Amount (if any) for such period is in excess of \$7,500,000 and only with respect to the amount of such Excess Cash Flow Amount in excess thereof;

(iii) (x) If the Borrower or any of its Restricted Subsidiaries which are Domestic Subsidiaries Disposes of any property (other than any Disposition of any property permitted by Section 7.05 (except pursuant to Sections 7.05(j), 7.05(k) and 7.05(l)) which results in the realization by such Person of Net Cash Proceeds in excess of an aggregate amount of (x) \$10,000,000 in a single transaction or series of related transactions and (y) \$20,000,000 in the aggregate per Fiscal Year, the Borrower shall prepay (or Cash Collateralize, as applicable) an aggregate principal amount of Pro Rata Obligations equal to 100% of such Net Cash Proceeds in excess of (x) \$10,000,000 in a single transaction or series of related transactions and (y) \$20,000,000 in the aggregate per Fiscal Year no later than (subject to the provisions of this clause (iii) below) five (5) Business Days following receipt thereof by such Person (such prepayments (or Cash Collateralization) to be applied as set forth in clauses (v) and (vii) below); *provided*, that so long as no Event of Default shall have occurred and be continuing, such prepayment (or Cash Collateralization) shall not be required to the extent the Borrower reinvests such Net Cash Proceeds in assets of a kind then used or usable in the business of the Borrower and its Restricted Subsidiaries within 360 days after the date of receipt of such Net Cash Proceeds, or enters into a binding commitment thereof within said 360-day period and subsequently makes such reinvestment within 180 days after the end of such 360-day period; *provided* that the Borrower notifies the Administrative Agent within five (5) Business Days following receipt by the Borrower or any of its Restricted Subsidiaries of such Net Cash Proceeds of the Borrower’s intent to reinvest such Net Cash Proceeds.

(iv) Upon any Extraordinary Receipt received by or paid to or for the account of the Borrower or any of its Restricted Subsidiaries, the Borrower shall prepay (or Cash Collateralize, as applicable) an aggregate principal amount of Pro Rata Obligations equal to 100% of all Net Cash Proceeds received therefrom in excess of (x) \$10,000,000 in a single transaction or series of related transactions and (y) \$20,000,000 in the aggregate per Fiscal Year no later than (subject to the provisions of this clause (iv) below) five (5) Business Days following receipt thereof by such Person (such prepayments (or Cash Collateralization) to be applied as set forth in clauses (v) and (vii) below); *provided*, that so long as no Event of Default shall have occurred and be continuing, such prepayment (or Cash Collateralization) shall not be required to the extent the Borrower

reinvests such Net Cash Proceeds in assets of a kind then used or usable in the business of the Borrower and its Restricted Subsidiaries within 360 days after the date of receipt of such Net Cash Proceeds, or enters into a binding commitment thereof within said 360-day period and subsequently makes such reinvestment within 180 days after the end of such 360-day period; *provided* that the Borrower notifies the Administrative Agent within ten (10) Business Days following receipt by the Borrower or any of its Restricted Subsidiaries of such Net Cash Proceeds of the Borrower's intent to reinvest such Net Cash Proceeds.

(v) Subject to the next sentence, each prepayment (or Cash Collateralization, as applicable) of Pro Rata Obligations pursuant to this Section 2.05(b) shall be applied, *first*, to the Term Loans held by all Term Lenders in accordance with their Applicable Percentages (allocated pro rata as among the Term Loans and to each Term Lender on a pro rata basis in accordance with the principal amount of the applicable Term Loans held thereby and to scheduled amortization payments in direct order of maturity), *second*, any excess after the application of such proceeds in accordance with clause *first* above, to the Revolving Credit Facility in the manner set forth in clause (vii) of this Section 2.05(b) and *third*, any excess after the application of such proceeds in accordance with clauses *first* and *second* above may be retained by the Borrower. Except with respect to Term Loans incurred in connection with any Refinancing Amendment or any Joinder Agreement (which, in each case, may be prepaid on a less than pro rata basis if expressly provided for in such Refinancing Amendment or Joinder Agreement), each prepayment pursuant to this Section 2.05(b) shall be applied ratably to each Class of Loans then outstanding entitled to payment pursuant to the prior sentence (*provided* that any prepayment of Loans with the Net Proceeds of Credit Agreement Refinancing Indebtedness shall be applied solely to each applicable Class of Refinanced Debt). Any prepayment of a Loan pursuant to this Section 2.05(b) shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Any prepayment of Term B Loans made on or prior to the date that is twelve months after the Closing Date shall be accompanied by the fee set forth in Section 2.05(b)(ix), as applicable.

(vi) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Commitments at such time (including, for the avoidance of doubt, as a result of the termination of any Class of Commitments on the Maturity Date with respect thereto), the Borrower shall immediately prepay Revolving Credit Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) (in an aggregate amount equal to 105% of the face amount thereof) in an aggregate amount sufficient to reduce the Total Revolving Credit Outstandings to the aggregate Revolving Credit Commitments. If for any reason the Outstanding Amount of L/C Obligations at any time exceed the Letter of Credit Sublimit at such time, the Borrower shall immediately prepay L/C Borrowings and/or Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce the Outstanding Amount of L/C Obligations to the Letter of Credit Sublimit.

(vii) Prepayments of the Revolving Credit Facilities made pursuant to this Section 2.05(b), *first*, shall be applied ratably to the L/C Borrowings, *second*, shall be applied ratably to the outstanding Revolving Credit Loans held by all Revolving Credit Lenders in accordance with their Applicable Revolving Credit Percentages, and, *third*, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the applicable L/C Issuer or the Revolving Credit Lenders, as applicable. Prepayments of the Revolving Credit Facilities made pursuant to this Section 2.05(b) shall be applied ratably to the outstanding Revolving Credit Loans. Amounts to be applied pursuant to this Section 2.05(b) to the mandatory prepayment of Term Loans and Revolving Credit Loans shall be applied, as applicable, first to reduce outstanding Base Rate Loans and any amounts remaining after such application shall be applied as directed by the Borrower to prepay Eurodollar Rate Loans.

(viii) Each Term Lender may elect, by notice to the Administrative Agent at or prior to the time and in the manner specified by the Administrative Agent, prior to any prepayment of Term Loans required to be made by the Borrower pursuant to Section 2.05(b)(ii), Section 2.05(b)(iii) or Section 2.05(b)(iv), to decline all (but not a portion) of its Applicable Percentage of such prepayment (such declined amounts, the “**Declined Proceeds**”). Any Term Lender declining such prepayment shall give written notice thereof to the Administrative Agent by 11:00 a.m. no later than one (1) Business Day after the date of such notice from the Administrative Agent. If a Lender fails to deliver a notice of election declining receipt of its Applicable Percentage of such mandatory prepayment to the Administrative Agent within the time frame specified above, any such failure will be deemed to constitute an acceptance of such Lender’s Applicable Percentage of the total amount of such mandatory prepayment of Term Loans.

(ix) If on or before the date that is one year after the Closing Date, there occurs any (i) prepayment or repayment of Term B Loans, (ii) amendment to the terms of the Term B Loans which reduces the “effective” interest rate applicable to the Term B Loans (as such comparative rates are determined by the Administrative Agent) (in each case, with original issue discount and upfront fees, which shall be deemed to constitute like amounts of original issue discount, being equated to interest margins in a manner consistent with generally accepted financial practice based on an assumed four-year life to maturity) or (iii) acceleration of all or any portion of the Term B Loans for any reason, then, simultaneously with such prepayment, repayment, repricing or refinancing amendment or acceleration, the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Lenders (including, in the case of clause (ii), to each Term B Lender that refuses to consent to such amendment (which shall include each Term B Lender that refuses to consent to an amendment if such Term B Lender is required to make a mandatory assignment pursuant to Section 10.13 in connection therewith)), 1.00% of the aggregate principal amount of the Term B Loans so prepaid, repaid, repriced, refinanced or accelerated; *provided that* (x) mandatory prepayments of Term B Loans made from (x) Excess Cash Flow pursuant to Section 2.05(b)(ii), (y) Net Cash Proceeds pursuant to Section 2.05(b)(iii) or Section 2.05(b)(iv) or (z) repayments made pursuant to Section 2.07(a), shall not be subject to the prepayment premium contained in this Section 2.05(b)(ix).

Section 2.06 *Termination or Reduction of Commitments*. (a) *Optional*. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facilities (on a pro rata basis among the Revolving Credit Facilities, subject to the terms of [Section 2.17](#)) or the Letter of Credit Sublimit, or from time to time permanently reduce the Revolving Credit Commitments (on a pro rata basis among the Revolving Credit Facilities, subject to the terms of [Section 2.17](#)) or the Letter of Credit Sublimit; *provided* that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Revolving Credit Facilities if, after giving effect thereto and to any concurrent prepayments of the Revolving Credit Facilities hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facilities, (B) any Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments of such Revolving Credit Facility hereunder, the Total Revolving Credit Outstandings in respect of such Revolving Credit Facility would exceed such Revolving Credit Facility or (C) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations would exceed the Letter of Credit Sublimit.

(b) *Mandatory*.

(i) The aggregate Term B Commitments shall be automatically and permanently reduced to zero on the date of the Term B Borrowing, which shall be on the Closing Date.

(ii) If after giving effect to any reduction or termination of Revolving Credit Commitments under this [Section 2.06](#) the Letter of Credit Sublimit exceeds the aggregate Revolving Credit Facilities at such time, the Letter of Credit Sublimit shall be automatically reduced by the amount of such excess.

(c) *Application of Commitment Reductions; Payment of Fees*. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit or the Revolving Credit Commitments under this [Section 2.06](#). Upon any reduction of any Revolving Credit Commitments, the Revolving Credit Commitments of each applicable Revolving Credit Lender shall be reduced by such Revolving Credit Lender's Applicable Revolving Credit Percentage of such reduction amount. All fees in respect of any Revolving Credit Facility accrued until the effective date of any termination of such Revolving Credit Commitments shall be paid on the effective date of such termination.

Section 2.07 *Repayment of Loans.*

(a) *Term Loans.* Subject to [Section 2.14\(i\)](#), the Borrower shall repay to the Administrative Agent for the ratable account of the Term B Lenders principal amounts of the Term B Loans in consecutive quarterly installments in the aggregate amounts set forth below on the dates set forth below:

<u>Amortization Date</u>	<u>Term B Loan Installment</u>
March 31, 2020	\$ 8,750,000
June 30, 2020	\$ 8,750,000
September 30, 2020	\$ 8,750,000
December 31, 2020	\$ 8,750,000
March 31, 2021	\$ 8,750,000
June 30, 2021	\$ 8,750,000
September 30, 2021	\$ 8,750,000
December 31, 2021	\$ 8,750,000
March 31, 2022	\$ 8,750,000
June 30, 2022	\$ 8,750,000
September 30, 2022	\$ 8,750,000
December 31, 2022	\$ 8,750,000
March 31, 2023	\$ 8,750,000
June 30, 2023	\$ 8,750,000
September 30, 2023	\$ 8,750,000
December 31, 2023	\$ 8,750,000
March 31, 2024	\$ 8,750,000
June 30, 2024	\$ 8,750,000
September 30, 2024	\$ 8,750,000
Maturity Date	Aggregate principal amount of all Term B Loans outstanding

provided, however, that the final principal repayment installment of the Term B Loans shall be repaid on the Maturity Date for the Term B Facility and shall be in an amount equal to the aggregate principal amount of all Term B Loans outstanding on such date. In the event any Incremental Term Loans or Refinancing Term Loans are made, such Incremental Term Loans or Refinancing Term Loans shall be repaid in the amounts and dates set forth in the applicable Joinder Agreement or Refinancing Amendment with respect thereto and on the applicable Maturity Date thereof. All payments made pursuant to this [Section 2.07\(a\)](#) shall be applied on a pro rata basis to each Term Lender holding Term Loans on the applicable Facility or Class being repaid.

(b) *Revolving Credit Loans.* The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the applicable Maturity Date for the Revolving Credit Facilities of a given Class the aggregate principal amount of all of its Revolving Credit Loans of such Class outstanding on such date.

Section 2.08 *Interest*.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurodollar Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate for Eurodollar Rate Loans under such Facility and (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for Base Rate Loans under such Facility.

(b) (i) Automatically, upon the occurrence and while any Event of Default as described in Section 8.01(a), 8.01(f) or 8.01(g) exists, the Borrower shall pay interest on all overdue amounts then outstanding hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09 *Fees*. In addition to certain fees described in Sections 2.03(h) and (i):

(a) *Facility Fee*. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Percentage of the applicable Revolving Credit Facility, a facility fee in U.S. Dollars equal to the Facility Fee Rate with respect to the applicable Revolving Credit Facility under which such Revolving Credit Lender has a Revolving Credit Commitment *times* the actual daily amount by which the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16. The facility fee shall accrue at all times from the Closing Date until the applicable Maturity Date for the applicable Revolving Credit Commitments, including at any time during which one or more of the conditions in Section 4.02 is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur following the Closing Date and on the applicable Maturity Date for the applicable Revolving Credit Commitments. The facility fee shall be calculated quarterly in arrears.

(b) *Administrative Agent Fee*. The Borrower agrees to pay to the Administrative Agent, for its own account, the fees set forth in the Agency Fee Letter and such other fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(c) *Other Fees.* The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement as a Lender on the Closing Date, as fee compensation for the funding of such Lender's Term B Loans and funded and unfunded Revolving Credit Commitments, a closing fee in an amount separately agreed to by the Borrower and the Arrangers for the benefit of such Lenders on the Closing Date, payable to such Lender from the proceeds of the Term B Loans and/or Revolving Credit Loans as and when funded on the Closing Date. Such closing fee shall be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter.

Section 2.10 *Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.*

(a) All computations of interest for Base Rate Loans based on the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year) or, in the case of interest in respect of Revolving Credit Loans denominated in Alternative Currencies, the applicable market practice for such Alternative Currency, which shall be either on the basis of a year of a 365 or 366 days or a 360-day year. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, notwithstanding Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower, the Administrative Agent or the Required Lenders determine that (i) the Secured Net Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Secured Net Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the applicable L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or any L/C Issuer, as the case may be, under Sections 2.03(h), 2.08(b), 2.09(a) or under Article 8. The Borrower's obligations under this Section 2.10(b) shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder for 90 days after such termination and repayment.

Section 2.11 *Evidence of Debt.* (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the

Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in [Section 2.11\(a\)](#), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

Section 2.12 Payments Generally; Administrative Agent's Clawback.

(a) *General.* All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal and interest on Loans and L/C Obligations denominated in an Alternative Currency, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in U.S. Dollars and in Same Day Funds not later than 12:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with respect to principal and interest on Loans and L/C Obligations denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in U.S. Dollars in an amount equal to the U.S. Dollar Equivalent of the amount due in such Alternative Currency as of the date of payment. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m., in the case of payments in U.S. Dollars, or after the Applicable Time specified by the Administrative Agent, in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) *Funding by Lenders; Presumption by Administrative Agent.* Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 p.m. on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(c) *Payments by Borrower; Presumptions by Administrative Agent.* Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or the applicable L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Appropriate Lender, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender, any L/C Issuer or the Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) *Failure to Satisfy Conditions Precedent.* If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this [Article 2](#), and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in [Article 4](#) or in the applicable Joinder Agreement or Refinancing Amendment are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) *Obligations of Lenders Several.* The obligations of the Lenders hereunder to make Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and to make payments pursuant to [Section 10.04\(c\)](#) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under [Section 10.04\(c\)](#) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under [Section 10.04\(c\)](#).

(f) *Funding Source.* Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) *Insufficient Funds.* If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) *first*, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) *second*, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

Section 2.13 *Sharing of Payments by Lenders.* If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, *provided that*:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 2.15, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than to the Borrower or any Restricted Subsidiary or Affiliate thereof (as to which the provisions of this Section shall apply unless such purchase is made by the Borrower pursuant to Section 10.06(b)(vii)).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 2.14 Incremental Facilities.

(a) The Borrower may by written notice to the Administrative Agent elect to increase the existing Revolving Credit Commitments of any Class (any such increase, the “**Incremental Revolving Credit Commitments**”) and/or increase the existing Term B Commitments or any Incremental Term Loan Commitments and/or incur one or more new term loan commitments (the “**Incremental Term Loan Commitments**”), by an amount (1) not to exceed in the aggregate, at the time of incurrence, the Incremental Available Amount referred to in clauses (a), (b) and (c)(i) of the definition thereof and (2) not less than, individually, \$25,000,000.

(b) Each such notice shall specify (i) the date (each, an “**Increased Amount Date**”) on which the Borrower proposes that the Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable, shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent (or such shorter period of time as may be agreed to by the Administrative Agent in its sole discretion); and (ii) the identity of each Lender or other Person, which must be an Eligible Assignee (each, an “**Incremental Revolving Loan Lender**” or “**Incremental Term Loan Lender**,” as applicable) to whom the Borrower proposes any portion of such Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable, be allocated and the amounts of such allocations. Any Lender approached to provide all or a portion of the Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable, may elect

or decline, in its sole discretion, to provide an Incremental Revolving Credit Commitment or Incremental Term Loan Commitment. Any Incremental Term Loan Commitments effected through the establishment of one or more term loan commitments made on an Increased Amount Date that are not fungible for United States federal income tax purposes with an existing Class of Term Loans shall be designated a separate Class of Incremental Term Loan Commitments for all purposes of this Agreement. Notwithstanding the foregoing, any Incremental Term Loans may be treated as part of the same Class as any other Incremental Term Loans if such Incremental Term Loans have identical terms (other than effective yield) and are fungible for United States federal income tax purposes with such other Incremental Term Loans.

(c) The Administrative Agent shall notify the Lenders promptly upon receipt of the Borrower's notice of each Increased Amount Date and in respect thereof (i) the Incremental Revolving Credit Commitments and the Incremental Revolving Loan Lenders or Incremental Term Loan Commitments and the Incremental Term Loan Lenders, as applicable and (ii) in the case of each notice to any applicable Revolving Credit Lender of any such given Class, the respective interests in such Revolving Credit Lender's Revolving Credit Loans of such Class, in each case subject to the assignments contemplated by this Section.

(d) Such Incremental Revolving Credit Commitments or Incremental Term Loan Commitments shall become effective as of such Increased Amount Date; *provided that*:

(i) (x) subject, solely in the case of Incremental Term Loans, to Section 1.09(c), no Event of Default shall exist on such Increased Amount Date before or after giving effect to such Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable and the extensions of credit to be made thereunder on such date; *provided that* this clause (i)(x) may be waived or limited as agreed in the Joinder Agreement between the Borrower and the applicable Incremental Term Loan Lenders; and (y) the representations and warranties of the Borrower and each other Loan Party contained in Article 5 hereof shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) on and as of such date, except in each case to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date); *provided that*, in the case of Incremental Term Loans incurred to finance a Permitted Acquisition or other Investment in the nature of an acquisition, this clause (i)(y) shall be limited to Sections 5.01(a), 5.01(b), 5.02(a), 5.13, 5.17, 5.18, 5.19 (other than the first or second sentence thereof) and 5.20;

(ii) with regard to the incurrence of any additional Class of Incremental Term Loans incurred pursuant to this Section 2.14, the yield applicable to each such additional Class of Incremental Term Loans shall be determined by the Borrower and the applicable lenders under such additional Class of Incremental Term Loans as set forth in the applicable Joinder Agreement; *provided that* the Effective Yield applicable to such additional Class of Incremental Term Loans will not be more than fifty (50) basis points greater than the Effective Yield for the initial Term B Loans incurred on the Closing Date unless the interest rate margin with respect to the initial Term B Loans incurred on the

Closing Date (and any Incremental Term Loans added to such Term B Loans) is increased by an amount equal to the difference between the Effective Yield with respect to such additional Class of Incremental Term Loans less fifty (50) basis points and the Effective Yield for the initial Term B Loans incurred on the Closing Date (and any Incremental Term Loans added to such Term B Loans) (the “**MFN Protection**”);

(iii) the Incremental Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable, shall be effected pursuant to one or more Joinder Agreements executed and delivered by the Borrower, the Incremental Revolving Loan Lender(s) or Incremental Term Loan Lender(s), as applicable, and the Administrative Agent, each of which shall be recorded in the Register (and each Incremental Revolving Loan Lender and Incremental Term Loan Lender shall be subject to the requirements set forth in Section 3.01);

(iv) the Incremental Facilities shall be Guaranteed by the Guarantors and rank *pari passu* in right of security with the other Facilities;

(v) all fees and reasonable out-of-pocket expenses owing to the Administrative Agent and the Lenders (other than a Defaulting Lender) in respect of the Incremental Revolving Credit Commitments and Incremental Term Loan Commitments shall have been paid; and

(vi) the Borrower shall deliver or cause to be delivered legal opinions, officer’s certificates and such other documents reasonably requested by the Administrative Agent in connection with any such transaction.

(e) On any Increased Amount Date on which Incremental Revolving Credit Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (i) each of the existing Revolving Credit Lenders of the Class being so increased shall assign to each of the Incremental Revolving Loan Lenders, and each of the Incremental Revolving Loan Lenders shall purchase from each of the existing Revolving Credit Lenders of the Class being so increased, at the principal amount thereof (together with accrued interest), such interests in the Revolving Credit Loans of the Class being so increased and participations in Letters of Credit outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Credit Loans and participations in Letters of Credit will be held by existing Revolving Credit Lenders of such Class and Incremental Revolving Loan Lenders ratably in accordance with their Revolving Credit Commitments of the Class being so increased after giving effect to the addition of such Incremental Revolving Credit Commitments to the Revolving Credit Commitments of such Class, (ii) each Incremental Revolving Credit Commitment shall be deemed for all purposes a Revolving Credit Commitment of the Class being so increased and each Loan made thereunder (an “**Incremental Revolving Loan**”) shall be deemed, for all purposes, a Revolving Credit Loan of the Class being so increased and (iii) each Incremental Revolving Loan Lender shall become a Lender with respect to the Incremental Revolving Credit Commitment and all matters relating thereto.

(f) On any Increased Amount Date on which any Incremental Term Loan Commitments of any Class (or any Incremental Term Loan Commitments increasing any existing Term Loans) are effective, subject to the satisfaction of the foregoing terms and conditions, (i) each Incremental Term Loan Lender of such Class or increase shall make a Loan to the Borrower (an “**Incremental Term Loan**”) in an amount equal to its Incremental Term Loan Commitment of such Class or increase and (ii) each Incremental Term Loan Lender of such Class or increase shall become a Lender hereunder with respect to the Incremental Term Loan Commitment of such Class or increase and the Incremental Term Loans of such Class or increase made pursuant thereto.

(g) The terms (including pricing, premiums, fees, rate floors, optional prepayment provisions, and/or mandatory prepayment provisions) and conditions of the Incremental Term Loans and Incremental Term Loan Commitments shall be, except as otherwise explicitly set forth herein, as agreed in the Joinder Agreement between the Borrower, the applicable Incremental Term Loan Lenders providing such Incremental Term Loan Commitments and the Administrative Agent; *provided* that (i) the terms of such Indebtedness shall not be more restrictive, taken as a whole, to the Borrower and the other Loan Parties than those set forth in this Agreement prior to the execution of such Joinder Agreement unless (x) such terms apply only after the Latest Maturity Date at the time such Indebtedness is established or (y) this Agreement is amended so that such terms are also applicable for the benefit of any Lenders under any then-existing Facilities, (ii) the Weighted Average Life to Maturity of all Incremental Term Loans of any such Class shall be no shorter than the Weighted Average Life to Maturity of any other Term Loans at the time of the incurrence of such Incremental Term Loans, (iii) the applicable Incremental Term Loan Maturity Date of each Class shall be no earlier than the Latest Maturity Date at the time of the incurrence of such Incremental Term Loans, (iv) the pricing of each Class of Incremental Term Loans may be subject to “most favored nations” provisions if and to the extent set forth in the Joinder Agreement for such Class and (v) in the case of Incremental Term Loans, such Indebtedness may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis) in any mandatory prepayments of Term Loans hereunder, as specified in the applicable Joinder Agreement, and in the case of Incremental Revolving Credit Commitments, such Incremental Revolving Credit Commitments may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis) in any mandatory reductions of Revolving Credit Commitments hereunder, as specified in the applicable Joinder Agreement.

(h) The terms and provisions of the Incremental Revolving Loans and Incremental Revolving Credit Commitments shall be identical to the other Revolving Credit Loans of the Class being so increased and the Revolving Credit Commitments of the Class being so increased; *provided* that if the Incremental Revolving Loan Lenders require an interest rate in excess of the interest rate then applicable to the Revolving Credit Facility of the Class being so increased, the interest rate on the Revolving Credit Facility of such Class shall be increased to equal such required rate without further consent of the affected Lenders.

(i) Each Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this [Section 2.14](#) (including any amendments that are not adverse to the interests of any Lender that are made to effectuate changes necessary or appropriate to enable any Incremental Term Loans that are

intended to be fungible with any other Term Loans to be fungible with such other Term Loans, which shall include any amendments that modify the aggregate principal amount of scheduled installment payments to the extent such amendment does not decrease the installment payment an existing Term Lender would have received prior to giving effect to any such amendment).

(j) This Section 2.14 shall supersede any provisions in Section 2.13 or Section 10.01 to the contrary.

Section 2.15 *Cash Collateral*.

(a) *Certain Credit Support Events*. Upon the request of the Administrative Agent or any L/C Issuer if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize all L/C Obligations in an amount equal to 105% of the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent or any L/C Issuer, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.16(a)(iv)) and any Cash Collateral provided by the Defaulting Lender).

(b) *Grant of Security Interest*. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at a bank selected by the Borrower and reasonably acceptable to the Administrative Agent. The Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuers and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Cash Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) *Application*. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.05, 2.16 or Section 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) *Release*. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b))) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; *provided that* (x) Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the applicable L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

Section 2.16 *Defaulting Lenders*.

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

(i) *Waivers and Amendments*. That Defaulting Lender's right to approve or disapprove any amendment, modification, waiver or consent with respect to this Agreement shall be restricted as set forth in the definitions of Required Lenders, Required Revolving Credit Lenders, and Required Facility Lenders and, in addition, Defaulting Lenders shall not be permitted to vote with respect to any other amendment, modification, waiver or consent pursuant to Section 10.01 or otherwise direct the Administrative Agent pursuant to the terms hereof or of the other Loan Documents; *provided that* any amendment, modification, waiver or consent requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender.

(ii) *Reallocation of Payments*. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuers hereunder; *third*, if so determined by the Administrative Agent or requested by any L/C Issuer, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Letter of Credit; *fourth*, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders or any L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any L/C Issuer against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default exists, to the payment of

any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) *Certain Fees*. That Defaulting Lender (x) shall not be entitled to receive a facility fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(h).

(iv) *Reallocation of Applicable Percentages to Reduce Fronting Exposure*. During any period in which there is a Defaulting Lender in respect of the Revolving Credit Facility, for purposes of computing the amount of the obligation of each Revolving Credit Lender that is not a Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the "Applicable Percentage" and "Applicable Revolving Credit Percentage" of each Revolving Credit Lender that is not a Defaulting Lender in respect of the Revolving Credit Facility shall be computed without giving effect to the Revolving Credit Commitment of that Defaulting Lender; *provided* that (i) each such reallocation shall be given effect only if, at the date the applicable Revolving Credit Lender becomes a Defaulting Lender, no Default exists; and (ii) the aggregate obligation of each Revolving Credit Lender that is not a Defaulting Lender to acquire, refinance or fund participations in Letters of Credit shall not exceed the positive difference, if any, of (x) the Revolving Credit Commitment of that Revolving Credit Lender that is not a Defaulting Lender minus (y) the aggregate Outstanding Amount of the Revolving Credit Loans of such Revolving Credit Lender plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations.

(b) *Defaulting Lender Cure*. If the Borrower, the Administrative Agent, and the L/C Issuers agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders (and shall pay to such other Lenders any break funding costs that such other Lenders may incur as a result of such purchase) or take such other actions as the Administrative Agent may determine

to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Revolving Credit Lenders in accordance with their Applicable Revolving Credit Percentages (without giving effect to Section 2.16(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Revolving Credit Lender will constitute a waiver or release of any claim of any party hereunder arising from that Revolving Credit Lender's having been a Defaulting Lender.

Section 2.17 *Refinancing Facilities.*

(a) On one or more occasions, the Borrower may obtain, from any Lender or any other bank or financial institution or other institutional lender or investor that would constitute an Eligible Assignee if it were purchasing Loans hereunder and that agrees to provide any portion of Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments, or Other Revolving Loans, Credit Agreement Refinancing Indebtedness in the form of Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments or Other Revolving Loans, in each case pursuant to a Refinancing Amendment in accordance with this Section 2.17 (each, an "**Additional Refinancing Lender**"); *provided* that (i) the Administrative Agent and each L/C Issuer shall have consented (such consent not to be unreasonably withheld, conditioned, or delayed) to such Lender's or Additional Refinancing Lender's providing such Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments or Other Revolving Loans to the extent such consent, if any, would be required under Section 10.06 for an assignment of Refinancing Term Commitments, Refinancing Term Loans, Other Revolving Commitments, or Other Revolving Loans, as applicable, to such Lender or Additional Refinancing Lender; *provided, further*, that the following terms are satisfied:

(i) any Refinancing Term Loans may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) as among the various Classes of Term Loans (in accordance with the respective outstanding principal amounts thereof) in any voluntary or mandatory repayments or prepayments of Term Loans hereunder, as specified in the applicable Refinancing Amendment;

(ii) (x) subject to clause (y), all Other Revolving Commitments shall be deemed to be Revolving Credit Commitments for purposes of borrowings and prepayments of Revolving Credit Loans and participations in Letters of Credit and (y) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Other Revolving Commitments (and related outstandings), (B) repayments required upon the maturity date of the Other Revolving Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (iv), below)) of Other Revolving Loans after the date of obtaining any Other Revolving Commitments shall be made on a pro rata basis with all other Revolving Commitments;

(iii) subject to the provisions of Section 2.03(k) to the extent dealing with Letters of Credit which mature or expire after a maturity date when there exist Other Revolving Commitments with a longer maturity date, all Letters of Credit shall be participated on a pro rata basis by all Lenders with Revolving Credit Commitments (including Other Revolving Credit Commitments) in accordance with their Applicable Revolving Credit Percentage;

(iv) notwithstanding anything to the contrary herein, the permanent repayment of Other Revolving Loans with respect to, and termination of, Other Revolving Commitments, after the date of the applicable Refinancing Amendment, shall be made on a pro rata basis with all other Revolving Credit Loans and Revolving Credit Commitments, except that the Borrower shall be permitted to permanently repay and terminate commitments of any such Class on a better than pro rata basis as compared to any other Class with a later Maturity Date than such Class; and

(v) assignments and participations of Other Revolving Commitments and Other Revolving Loans shall be governed by the same assignment and participation provisions applicable to Original Revolving Credit Commitments and Original Revolving Credit Loans.

(b) The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date other than changes to such legal opinion resulting from a Change in Law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the enforceability of the Collateral Documents and the perfection and priority of the Liens thereunder are preserved and maintained.

(c) Each issuance of Credit Agreement Refinancing Indebtedness under Section 2.17(a) shall be in an aggregate principal amount that is not less than \$25,000,000.

(d) Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to a Refinancing Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto and (ii) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.17, and the Lenders hereby expressly authorize the Administrative Agent to enter into any such Refinancing Amendment.

(e) This Section 2.17 shall supersede any provisions in Section 2.13 and 10.01 to the contrary, and nothing in Section 2.05 to the contrary shall prohibit the application of this Section 2.17.

ARTICLE 3.
TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01 *Taxes.*

(a) *Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.* Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws (as determined in the good faith discretion of the applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) *Payment of Other Taxes by the Borrower.* Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of Other Taxes.

(c) *Tax Indemnifications.*

(i) Without limiting the provisions of subsection (a) or (b) above, the Loan Parties shall, and do hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) withheld or deducted by a Withholding Agent or paid by the Recipient, and any reasonable out of pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Borrower shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, for any amount which a Lender or any L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error (so long as such certificate is prepared in a commercially reasonable manner in accordance with applicable Laws). No Loan Party shall be required to compensate any recipient pursuant to this Section 3.01 for any amounts to the extent that such recipient does not furnish notice of such possible indemnification claim within 180 days after such recipient receives notice from the applicable Governmental Authority of the specific Tax assessment giving rise to such indemnification claim.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and each L/C Issuer shall, and does hereby, severally indemnify:

(A) the Borrower and the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower or the Administrative Agent) incurred by or asserted against the Borrower or the Administrative Agent by an Governmental Authority as a result of the failure by such Lender or any L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy or similar deficiency of, any documentation required to be delivered by such Lender or any L/C Issuer, as the case may be, to the Borrower or the Administrative Agent pursuant to subsection (e)(ii); and

(B) the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for (x) any Indemnified Taxes attributable to such Lender or such L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) any Excluded Taxes attributable to such Lender or such L/C Issuer, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority and (z) any Taxes attributable to such Lender's or L/C Issuer's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register.

(iii) A certificate as to the amount of such payment or liability delivered to any Lender or any L/C Issuer by the Borrower or the Administrative Agent shall be conclusive absent manifest error. Each Lender and L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this subsection (c).

(d) *Evidence of Payments.* Upon request by the Borrower or the Administrative Agent, as the case may be, as soon as possible after any payment of Taxes by any Loan Party or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, such Loan Party shall deliver to the Administrative Agent or the Administrative Agent shall deliver to such Loan Party, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to such Loan Party or the Administrative Agent, as the case may be.

(e) *Status of Lenders; Tax Documentation.*

(i) For purposes of this Section 3.01(e), the term “Lender” includes any L/C Issuer. Each Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under any Loan Document shall deliver to the Borrower and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the delivery, completion and execution of documentation and other requested information described in this subsection (e)(i) (and not, for the avoidance of doubt, otherwise described in subsection (e)(ii)) shall not be required if in the Lender’s reasonable judgment such delivery, completion or execution would subject the Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, on or prior to the date on which a Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), but only to the extent it is legally entitled to do so,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent executed copies of IRS Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient), whichever of the following is applicable:

- (1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty,

- (2) executed copies of IRS Form W-8ECI,
- (3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, or
- (4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner together with the executed copies of the applicable IRS Forms;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the

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

(iv) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction or if any form or certification it previously delivered becomes obsolete or inaccurate or expires and (B) update any such form or certification or notify the Borrower and Administrative Agent in writing of its legal inability to do so.

(f) *Treatment of Certain Refunds.* At no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an L/C Issuer, or have any obligation to pay to any Lender or L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or L/C Issuer, as the case may be. If the Administrative Agent, any Lender or any L/C Issuer determines, in its sole discretion exercised reasonably, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by the Administrative Agent, such Lender or such L/C Issuer, as the case may be, related to the receipt of such refund and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower, upon the request of the Administrative Agent, such Lender or such L/C Issuer, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or such L/C Issuer in the event the Administrative Agent, such Lender or such L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or any L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person. Notwithstanding anything to the contrary in this subsection, in no event will the Administrative Agent, such Lender or such L/C Issuer be required to pay any amount to the Borrower pursuant to this subsection the payment of which would place the Administrative Agent, such Lender or such L/C Issuer in a less favorable after-Tax position than the Administrative Agent, such Lender or such L/C Issuer would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid.

(g) *Survival.* Each party's obligations under this Section 3.01 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or any L/C Issuer, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

Section 3.02 *Illegality*. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, U.S. Dollars or any Alternative Currency in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans in the affected currency or currencies or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), if such Loans are not denominated in U.S. Dollars, prepay such Loans, or if such Loans are denominated in U.S. Dollars, convert all such Loans of such Lender to Base Rate Loans or (y) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans (the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate), the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03 *Inability to Determine Rates*.

(a) Subject to Section 3.08, if the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (x)(i) deposits are not being offered to banks in the interbank market for the applicable amount and Interest Period of such Loan or (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or (y) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, then in each case, the Required Lenders will so notify the Administrative Agent and the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will, in the case of Loans in U.S. Dollars, be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in U.S. Dollars, in the amount specified therein.

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or any L/C Issuer;

(ii) subject any Recipient to any Tax (except for Indemnified Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Tax described in clause (a)(ii) or clause (b) through (d) of the definition of Excluded Tax) on its loans, loan principal, letters of credit, commitment, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer or the interbank market, any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to the Administrative Agent, any L/C Issuer or any Lender of making, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Administrative Agent, any Lender or any L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon the request of the Administrative Agent, such Lender or such L/C Issuer, the Borrower will pay to the Administrative Agent, such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate the Administrative Agent, such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; *provided*, that the Borrower shall not be obligated to pay any such compensation unless the Lender or L/C Issuer requesting such compensation also is requesting compensation as a result of such Change in Law from other similarly situated customers under agreements relating to similar credit transactions that include provisions similar to this Section 3.04(a); *provided* that the Borrower shall not be required to compensate a Lender or a L/C Issuer pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or L/C Issuer notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or L/C Issuer's intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) *Capital Requirements.* If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered; *provided*, that the Borrower shall not be obligated to pay any such compensation unless the Lender or such L/C Issuer requesting such compensation also is requesting compensation as a result of such Change in Law from other similarly situated customers under agreements relating to similar credit transactions that include provisions similar to this Section 3.04(b).

(c) *Certificates for Reimbursement.* A certificate of a Lender or an L/C Issuer setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Reserves on Eurodollar Rate Loans.* The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurodollar funds or deposits (currently known as "**Eurodollar liabilities**"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive and binding), which shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least ten days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender; *provided, further*, that the Borrower shall not be obligated to pay any such additional interest unless the Lender requesting such additional interest also is requesting additional interest from other similarly situated customers under agreements relating to similar credit transactions that include provisions similar to this Section 3.04(e). If a Lender fails to give notice ten days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten days from receipt of such notice.

Section 3.05 *Compensation for Losses*. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower (in the case of a borrowing, for a reason other than the failure of such Lender to make a Loan); or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 2.14, 3.06(b) or Section 10.13; or

(d) any payment by the Borrower of the principal of or interest on any Revolving Credit Loan or of any drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency in a different currency from the currency in which the applicable Revolving Credit Loan or Letter of Credit is denominated (except to the extent an L/C Issuer has required payment of any drawing under a Letter of Credit in U.S. Dollars pursuant to Section 2.03(c)(i)), including any foreign exchange losses or loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract. The Borrower shall also pay any customary and reasonable administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate, as applicable, for such Loan by a matching deposit or other borrowing in the London or other offshore interbank market for the applicable currency for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender, as specified in this Section, delivered to the Borrower shall be conclusive absent manifest error.

Section 3.06 *Mitigation Obligations; Replacement of Lenders*.

(a) *Designation of a Different Lending Office*. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, any L/C Issuer, or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such

Lender or such L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender or such L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02 as applicable, and (ii) in each case, would not subject such Lender or such L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or such L/C Issuer in connection with any such designation or assignment.

(b) *Replacement of Lenders.* If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, and in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a) which would eliminate such request for compensation or requirement to pay such additional amount, or if any Lender is a Defaulting Lender hereunder, the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, replace such Lender in accordance with Section 10.13.

Section 3.07 Survival. All of the Borrower's obligations under this Article 3 shall survive the termination of the Aggregate Commitments, any assignment of rights by, or the replacement of, a Lender, repayment, satisfaction or discharge of all other Obligations hereunder, and resignation or replacement of the Administrative Agent.

Section 3.08 Effect of Benchmark Transition Event.

(a) *Benchmark Replacement.* Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the LIBO Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the LIBO Rate with a Benchmark Replacement pursuant to this Section 3.08 will occur prior to the applicable Benchmark Transition Start Date.

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

(c) *Notices; Standards for Decisions and Determinations.* The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 3.08, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.08.

(d) *Benchmark Unavailability Period.* Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Rate Borrowing of, conversion to or continuation of Eurodollar Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, (x) in the case of Eurodollar Rate Loans denominated in U.S. Dollars, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans and (y) in the case of a request for a Borrowing or continuation in an Alternative Currency, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans in Dollars (in an amount equal to the U.S. Dollar Equivalent of the amount requested to be borrowed or continued in the Alternative Currency). During any Benchmark Unavailability Period, the component of the Base Rate based upon the LIBO Rate will not be used in any determination of Base Rate.

ARTICLE 4. CONDITIONS PRECEDENT

Section 4.01 *Conditions Precedent to the Closing Date.* The effectiveness of this Agreement and obligations of each L/C Issuer and each Lender to make the initial Credit Extensions on the Closing Date shall, in each case, be subject to the following conditions:

(a) The Administrative Agent's receipt of the following, each of which shall be originals, facsimiles or "pdf" or similar electronic format (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party each in form and substance reasonably satisfactory to the Administrative Agent:

(i) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two (2) Business Days prior to the Closing Date;

(ii) executed copies of (x) this Agreement, and (y) each Collateral Document set forth on Schedule 4.01(a)(ii), executed by each Loan Party thereto, together with:

(A) evidence that all filings under the UCC shall have been taken, completed or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent; and

(B) any other documents and instruments as may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent valid and subsisting first priority perfected Liens on the properties purported to be subject to the Collateral Documents set forth on Schedule 4.01(a)(ii), enforceable against all third parties in accordance with their terms;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) an opinion from (A) Lewis Rice LLC, counsel to the Loan Parties, and (B) local or other counsel in each of the jurisdictions listed on Schedule 4.01(a)(iv), in each case as reasonably requested by the Administrative Agent, in the case of each of clauses (A) and (B), in form and substance reasonably satisfactory to the Administrative Agent;

(v) a certificate attesting to the Solvency of the Borrower and its Subsidiaries (taken as a whole) on the Closing Date after giving effect to the Transactions, from the Chief Financial Officer of the Borrower, substantially in the form attached hereto as Exhibit B;

(vi) a certificate attesting to the compliance with clauses (c), (d), (f)(g) and (h) of this Section 4.01 on the Closing Date from a Responsible Officer of the Borrower;

(vii) a Committed Loan Notice pursuant to Section 2.02; and

(viii) copies of a recent Lien search in each jurisdiction reasonably requested by the Administrative Agent with respect to the Loan Parties.

(b) All fees and expenses due and payable to the Lenders, the Arrangers and the Administrative Agent and required to be paid on or prior to the Closing Date pursuant to the Engagement Letter and Fee Letters shall have been paid or shall have been authorized to be deducted from the proceeds of the initial funding under the Facilities, so long as any such fees or expenses not expressly set forth in the Fee Letters have been have been invoiced not less than three (3) business days prior to the Closing Date.

(c) Substantially concurrently with the initial funding of the Term B Facility, all existing third party debt for borrowed money of the Borrower and its Restricted Subsidiaries under the Bridge Facility Agreement shall be repaid, all commitments thereunder and all liens and security interests granted in connection therewith shall be terminated and after giving effect to the consummation of the Transactions on the Closing Date, the Borrower and its Subsidiaries shall have outstanding (i) no Indebtedness other than Indebtedness permitted by Section 7.03 and (ii) no Disqualified Equity Interests (the “**Refinancing**”).

(d) The Active Nutrition Transaction shall have been, or shall be, substantially concurrently with the initial funding of the Term B Facility, consummated substantially in accordance with the Registration Statement.

(e) The Administrative Agent shall have received at least three Business Days prior to the Closing Date, to the extent requested in writing at least seven Business Days prior to the Closing Date, all documentation and other information that the Administrative Agent, on behalf of itself or any other Lender, reasonably determines is necessary in order to allow the Administrative Agent and the Lenders to comply with applicable “know your customer” and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

(f) The representations and warranties of the Borrower and each other Loan Party contained in Article 5 hereof shall be true and correct in all material respects; *provided* that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects.

(g) There has been no change, occurrence or development since September 30, 2018 that could reasonably be expected to have a Material Adverse Effect.

(h) At the time of and immediately after giving effect to the Transactions, no Default shall have occurred and be continuing.

(i) The Administrative Agent shall have received a certificate from the Borrower’s insurance broker or other evidence reasonably satisfactory to it that all insurance required to be maintained pursuant to Section 6.06 is in full force and effect, together with endorsements naming the Administrative Agent, for the benefit of the Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 6.06.

(j) The Administrative Agent shall have received (i) the pro forma unaudited consolidated balance sheet of BRBR and its Subsidiaries as of June 30, 2019, (ii) the pro forma unaudited consolidated statement of operations of BRBR and its Subsidiaries as of and for the twelve-month period ending on September 30, 2018, and (iii) the pro forma unaudited consolidated statement of operations of BRBR and its Subsidiaries as of and for the nine-month period ending

on June 30, 2019, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statements of operations) (collectively, the “**Pro Forma Financial Statements**”), it being understood that the Pro Forma Financial Statements need not be prepared in compliance with Regulation S-X of the Securities Act of 1933, as amended, or include adjustments for purchase accounting (including adjustments of the type contemplated by Financial Accounting Standards Board Accounting Standards Codification 805, Business Combinations (formerly SFAS 141R)).

(k) The Administrative Agent shall have received (x) the Closing Annual Financial Statements; *provided* the foregoing financial statements are accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Active Nutrition Business, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand and (y) the Quarterly Financial Statements for each subsequent fiscal quarter (other than the fourth fiscal quarter) ended at least 45 days before the Closing Date.

Section 4.02 *Conditions to All Credit Extensions after the Closing Date*. The obligation of each Lender to honor any Request for Credit Extension other than a Letter of Credit, and if such Request for Credit Extension is for a Letter of Credit, the obligation of the applicable L/C Issuer to honor such Request for Credit Extension, after the Closing Date (other than (x) pursuant to a Conversion/Continuation Notice and (y) in connection with the funding of an Incremental Term Loan) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article 5 or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, that are qualified by materiality shall be true and correct (after giving effect to any qualification therein) on and as of the date of such Credit Extension, and each of the representations and warranties of the Borrower and each other Loan Party contained in any other Loan Document or in any document furnished at any time under or in connection herewith or therewith that are not qualified by materiality shall be true and correct in all material respects on and as of the date of such Credit Extension, except in each case to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in clauses (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than pursuant to a Conversion/Continuation Notice) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE 5.
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders on the Closing Date and on the date of each Credit Extension as contemplated by Section 4.02 as to each of the matters set forth below that:

Section 5.01 *Existence, Qualification and Power*. Each Loan Party and each Restricted Subsidiary (other than any Immaterial Subsidiary) thereof (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization; (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party; and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 *Authorization; No Contravention*. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any material contract to which such Person is a party or affecting such Person or the properties of such Person or any of its Restricted Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

Section 5.03 *Governmental Authorization; Other Consents*. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents or (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof), except for (x) filings and actions completed on or prior to the Closing Date and as contemplated hereby and by the Collateral Documents necessary to perfect or maintain the Liens on the Collateral granted by the Loan Parties in favor of the Administrative Agent for the benefit of the Secured Parties (including, without limitation, UCC financing statements and filings in the United States Patent and Trademark Office and the United States Copyright Office) and (y) approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect.

Section 5.04 *Binding Effect*. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

Section 5.05 *Financial Statements; No Material Adverse Effect*

(a) As of the Closing Date, the Closing Annual Financial Statements (A) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (B) fairly present, in all material respects, the financial condition of the Active Nutrition Business; and (C) show all material indebtedness and other liabilities, direct or contingent, of the Active Nutrition Business as of the date thereof, including liabilities for taxes, material commitments and Indebtedness to the extent required by GAAP.

(b) The most recent Annual Financial Statements of (x) BRBR and its Subsidiaries (as long as the Borrower and its Subsidiaries appear on such financial statements as consolidated subsidiaries of BRBR) and (y) otherwise the Borrower and its Subsidiaries: (A) were prepared in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein; (B) fairly present, in all material respects, the financial condition of BRBR and its Subsidiaries (or the Borrower and its Subsidiaries, as applicable) as of the dates thereof and their results of operations for the periods covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein; (C) show all material indebtedness and other liabilities, direct or contingent, of BRBR and its Subsidiaries (or the Borrower and its Subsidiaries, as applicable) as of the date thereof, including liabilities for taxes, material commitments and Indebtedness to the extent required by GAAP and (D) were accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences, as applicable, between the information relating to (x) BRBR and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand or (y) the Borrower and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand.

(c) The most recent Quarterly Financial Statements of (x) BRBR and its Subsidiaries (as long as the Borrower and its Subsidiaries appear on such financial statements as consolidated subsidiaries of BRBR) and (y) otherwise the Borrower and its Subsidiaries: (A) were each prepared in accordance with GAAP consistently applied throughout the period covered thereby, subject only to normal year-end audit adjustments and the absence of footnotes, except as otherwise expressly noted therein, (B) fairly present, in all material respects, the financial condition of BRBR and its Subsidiaries (or the Borrower and its Subsidiaries, as applicable) as of the date thereof and their results of operations for the period covered thereby and (C) were accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences, as applicable, between the information relating to (x) BRBR and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand or (y) the Borrower and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand.

(d) As of the Closing Date, the Pro Forma Financial Statements (i) were prepared in good faith based upon (A) the assumptions stated therein (which assumptions are believed by the Borrower on the date of delivery thereof and on the Closing Date to be reasonable), (B) accounting principles consistent with the Closing Annual Financial Statements except for any differences arising because the Closing Annual Financial Statements do not take into account BRBR and the transactions occurring on the Closing Date, and (C) the information available to the Borrower and its Subsidiaries as of the date of delivery thereof, (ii) accurately reflect all material adjustments required to be made to give effect to the Transactions and any other material transactions expected to be entered into or in connection therewith as of the Closing Date, (iii) have been prepared in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes) consistently applied throughout the applicable period covered thereby, and (iv) present fairly, in all material respects, the pro forma consolidated financial position and results of operations of the Borrower as of such date and for such periods, assuming that the Transactions and any other transactions expected to be entered into in connection therewith had occurred at such dates.

(e) Since September 30, 2018, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06 *Litigation*. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or the consummation of the Transaction or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

Section 5.07 *Ownership of Property*. Each of the Borrower and each Restricted Subsidiary has good record and marketable title to all owned property, or valid leasehold interests or valid licenses in all leased or licensed property, reasonably necessary or used in the ordinary conduct of its business, except for such defects in title, or failure to obtain a valid leasehold interest or valid license as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.08 *Environmental*.

(a) Each of the Loan Parties and its Restricted Subsidiaries is and has been in compliance with all Environmental Laws and has received and maintained in full force and effect all Environmental Permits required for its current operations, except where non-compliance could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) To the Loan Parties' knowledge, no Hazardous Materials are present, or have been released by any Person, whether related or unrelated to any Loan Party in, on, within, above, under, affecting or emanating from any real property currently or previously owned, leased or operated by any Loan Party or its Restricted Subsidiaries (i) in a quantity, location, manner or state requiring any cleanup, investigation or remedial action pursuant to any Environmental Laws; (ii) in violation or alleged violation of any Environmental Laws; or (iii) which has or could give rise to any Environmental Liability, including any claim pursuant to any Environmental Laws against any Loan Party or its Restricted Subsidiaries, except, in each case, as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) No Environmental Claim is pending or, to the Loan Parties' knowledge, proposed, threatened or anticipated, with respect to or in connection with any Loan Party or its Restricted Subsidiaries or any real properties now or previously owned, leased or operated by any Loan Party or its Restricted Subsidiaries except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) No properties now or, to the Loan Parties' knowledge, previously owned, leased or operated by any Loan Party or its Restricted Subsidiaries nor, to the Loan Parties' knowledge, any property to which any Loan Party or its Restricted Subsidiaries has transported or arranged for the transportation of any Hazardous Material is listed or, to the Loan Parties' knowledge, proposed for listing on the National Priorities List promulgated pursuant to CERCLA, on CERCLIS (as defined in CERCLA) or on any similar federal, state or foreign list of sites requiring investigation or cleanup, nor to the knowledge of the Loan Parties, is any such property anticipated or to the Loan Parties' knowledge, threatened to be placed on any such list, except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) To the Loan Parties' knowledge, there are no Environmental Liabilities of any Loan Party or its Restricted Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, and there are no facts, conditions, situations or set of circumstances which could reasonably be expected to result in or be the basis for any such Environmental Liability, except, in each case, as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(f) No Loan Party or any of its Restricted Subsidiaries has assumed or retained any Environmental Liability of any other Person, except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

This Section 5.08 contains the sole and exclusive representations and warranties of the Loan Parties with respect to environmental matters.

Section 5.09 *Insurance*. The properties of the Borrower and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies that are not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Restricted Subsidiary operates.

Section 5.10 *Taxes*. The Borrower and its Restricted Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income, business, franchise or assets otherwise due and payable, except (a) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (b) to the extent that failure to do so could not reasonably be expected to result in Material Adverse Effect.

Section 5.11 *ERISA Compliance; Labor Matters*.

(a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination or opinion/advisory letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no strikes, or other labor disputes pending or, to the Borrower's knowledge, threatened against the Borrower or any of its Restricted Subsidiaries, the hours worked and payments made to employees of the Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable law dealing with such matters and all payments due from the Borrower or any of its Restricted Subsidiaries or for which any claim may be made against the Borrower or any of its Restricted Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Borrower or such Restricted Subsidiary to the extent required by GAAP except, in each case, as would not reasonably be expected to result in a Material Adverse Effect. Except as could not reasonably be expected to result in a Material Adverse Effect, the consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which the Borrower or any of its Restricted Subsidiaries (or any predecessor) is a party or by which the Borrower or any of its Restricted Subsidiaries (or any predecessor) is bound.

(c) With respect to each scheme or arrangement mandated by a government other than the United States (a "**Foreign Government Scheme or Arrangement**") and with respect to each employee benefit plan maintained, contributed to or required to be contributed to by any Loan Party or any Restricted Subsidiary of any Loan Party primarily for the benefit of any employees located outside the United States (a "**Foreign Plan**"):

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the Closing Date, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

Section 5.12 *Subsidiaries; Equity Interests*. As of the Closing Date, the Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.12, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by the Borrower or one or more of its Subsidiaries in the amounts specified on Part (a) of Schedule 5.12 free and clear of all Liens except those created under the Collateral Documents. As of the Closing Date, (x) the Borrower has no equity investments in any other Person other than (i) those specifically disclosed in Part (b) of Schedule 5.12 and (ii) investments in Subsidiaries and (y) there are no Unrestricted Subsidiaries. All of the outstanding Equity Interests in the Borrower have been validly issued and are fully paid and nonassessable.

Section 5.13 *Margin Regulations; Investment Company Act*.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower or any Restricted Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

Section 5.14 *Disclosure*.

(a) No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the Transactions or delivered hereunder or under any other Loan Document (in each case, taken as a whole and as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by it to be

reasonable at the time made, it being recognized by the Administrative Agent and the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 5.15 *Compliance with Laws*. Each Loan Party and each Restricted Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties (including the Act), except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.16 *Intellectual Property; Licenses, Etc.* The Borrower and its Restricted Subsidiaries own or possess the right to use all of the trademarks, service marks, trade names, trade dress, logos, domain names and all good will associated therewith, copyrights, patents, patent rights, trade secrets, know-how, franchises, licenses, and other intellectual property rights (collectively, "**IP Rights**") that are reasonably necessary for the operation of their respective businesses as currently conducted, without conflict with the rights of any other Person, except where the failure to own or possess the right to use any such IP Rights would not reasonably be expected to have a Material Adverse Effect. The Borrower and its Restricted Subsidiaries hold all right, title and interest in and to such owned IP Rights free and clear of any Lien (other than Liens permitted by Section 7.01). No slogan or other advertising device, product, process, method, substance, part or other material or activity now employed, or now contemplated to be employed, by the Borrower or any Restricted Subsidiary infringes upon, misappropriates or otherwise violates any rights held by any other Person, except where such infringement, misappropriation or other violation would not reasonably be expected to have a Material Adverse Effect.

Section 5.17 *Solvency*. As of the Closing Date, immediately after giving effect to the consummation of the Transactions, the Borrower and its Subsidiaries on a consolidated basis are Solvent.

Section 5.18 *Collateral Documents*. The provisions of the applicable Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject, in the case of any Collateral other than Collateral consisting of Equity Interests, to Permitted Liens and, in the case of Collateral consisting of Equity Interests, to non-consensual Liens permitted by Section 7.01 (collectively, such Liens, "**Permitted Prior Liens**")) on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Section 5.19 *Anti-Terrorism; Anti-Money Laundering; Etc.* The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance in all material respects by the Borrower, its Restricted Subsidiaries and their respective directors, officers, and employees with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Restricted Subsidiaries and, to Borrower's knowledge, its and its Restricted Subsidiaries' respective officers and directors, are in compliance with Anti-Corruption Laws in all material respects and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in the Borrower being designated as a Sanctioned Person. No Loan Party nor any of its Restricted Subsidiaries or, to their knowledge, any of their Related Parties (i) is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States (50 U.S.C. App. §§ 1 et seq.), (ii) is in violation of (A) the Trading with the Enemy Act, (B) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) or any enabling legislation or executive order relating thereto, (C) the Act or (D) any other laws relating to terrorism or money laundering (collectively, the "**Anti-Terrorism Laws**") or (iii) is a Sanctioned Person. No part of the proceeds of any Loan or Letter of Credit hereunder will be unlawfully used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country, or in any other manner that will result in any violation by any Person (including any Lender or Arranger, the Administrative Agent or any L/C Issuer) of any Anti-Terrorism Laws or Sanctions.

Section 5.20 *Foreign Corrupt Practices Act.* No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws.

Section 5.21 *EEA Financial Institution.* No Loan Party is an EEA Financial Institution.

ARTICLE 6. AFFIRMATIVE COVENANTS

From and after the Closing Date, so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than contingent indemnification obligations as to which no claim has been asserted and obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the L/C Issuer have been made) shall remain outstanding, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03, 6.14 and 6.16) cause each Restricted Subsidiary to:

Section 6.01 *Financial Statements.* Deliver to the Administrative Agent:

(a) (I) within 90 days after the Closing Date, for the Fiscal Year ending September 30, 2019, a consolidated balance sheet of the Active Nutrition Business as at the end of such Fiscal Year, and the related consolidated statements of income or operations, changes in Stockholders' Equity, and cash flows for such Fiscal Year (with such financial statements showing comparative figures for the Active Nutrition Business for the Fiscal Year ending September 30, 2018), all in reasonable detail and prepared in accordance with GAAP, audited and accompanied

by a report and opinion of PricewaterhouseCoopers LLP or any other independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” qualification, “going concern” exception or “going concern” explanatory paragraph (other than a “going concern” qualification, exception or explanatory paragraph resulting solely from an upcoming maturity date under any Indebtedness occurring within one year from the time such opinion is delivered) or any qualification or exception paragraph as to the scope of such audit;

(II) within 90 days after the end of each Fiscal Year of the Borrower (commencing with the Fiscal Year ending September 30, 2020), a consolidated balance sheet of (x) BRBR and its Subsidiaries (as long as the Borrower and its Subsidiaries appear on such financial statements as consolidated subsidiaries of BRBR) and (y) otherwise, the Borrower and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of income or operations, changes in Stockholders’ Equity, and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year (with the financial statements for the Fiscal Year ending September 30, 2020 showing comparative figures for the Active Nutrition Business for the Fiscal Year ending September 30, 2019), all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of PricewaterhouseCoopers LLP or any other independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” qualification, “going concern” exception or “going concern” explanatory paragraph (other than a “going concern” qualification, exception or explanatory paragraph resulting solely from an upcoming maturity date under any Indebtedness occurring within one year from the time such opinion is delivered) or any qualification or exception paragraph as to the scope of such audit; *provided*, the foregoing financial statements are accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences between the information relating to (x) BRBR and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand or (y) the Borrower and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand;

(b) in connection with each of the first three fiscal quarters of each Fiscal Year of the Borrower (commencing with the fiscal quarter ending December 31, 2019), within 45 days after the end of each such fiscal quarter, a consolidated balance sheet of (x) BRBR and its Subsidiaries (as long as the Borrower and its Subsidiaries appear on such financial statements as consolidated subsidiaries of BRBR) and (y) otherwise, the Borrower and its Subsidiaries as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower’s Fiscal Year then ended, and the related consolidated statements of changes in Stockholders’ Equity, and cash flows for the portion of the Borrower’s Fiscal Year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year (with the comparative figures for all fiscal periods ending prior to December 31, 2020 showing comparative figures for the Active Nutrition Business), all in reasonable detail, certified by the chief executive officer, chief financial officer, treasurer or controller of BRBR (or the Borrower, as applicable) as fairly presenting, in all material respects,

the financial condition, results of operations, Stockholders' Equity and cash flows of BRBR and its Subsidiaries (or the Borrower and its Subsidiaries, as applicable) in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; *provided*, the foregoing financial statements are accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences, as applicable, between the information relating to (x) BRBR and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand or (y) the Borrower and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand (the "**Quarterly Financial Statements**"); and

(c) not later than 60 days after the end of each Fiscal Year of the Borrower (commencing with the Fiscal Year ending September 30, 2019), an annual budget of the Borrower and its Restricted Subsidiaries on a consolidated basis consisting of consolidated balance sheets and statements of income or operations and cash flows of the Borrower and its Restricted Subsidiaries on a quarterly basis for the then-current Fiscal Year (including the Fiscal Year in which the Latest Maturity Date occurs, if such Fiscal Year is the then-current Fiscal Year).

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrower shall not be required separately to furnish such information under Section 6.01(a) or (b), but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Section 6.01(a) or (b) at the times specified therein.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate (including showing the calculation of the financial covenant set forth in Section 7.11) signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower;

(b) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of BRBR or the Borrower by independent accountants in connection with the accounts or books of BRBR or the Borrower or any Restricted Subsidiary, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of BRBR or the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which BRBR or the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, whether or not otherwise required to be delivered to the Administrative Agent pursuant hereto; *provided* that to the extent any such documents are filed with the SEC, such documents shall be deemed delivered pursuant to this Section 6.02(c) at the time of and so long as the Borrower notifies the Administrative Agent (by facsimile or electronic mail) of the filing with the SEC of any such documents; and

(d) promptly, such additional information regarding the business, financial or corporate affairs of the Borrower or any Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or the Required Lenders, through the Administrative Agent, may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (1) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02 or (2) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that with respect to any such documents, the Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks, SyndTrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information within the meaning of United States federal securities laws ("**MNPI**") with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuers and the Lenders to treat such Borrower Materials as not containing any MNPI with respect to the Borrower or its Subsidiaries, or their respective securities (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information" (and the Administrative Agent agrees that only Borrower Materials marked "PUBLIC" will be made available on such portion of the Platform); and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform that is not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower materials "PUBLIC."

Section 6.03 *Notices*. Promptly notify the Administrative Agent when a Responsible Officer of the Borrower has knowledge:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or would reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Restricted Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Restricted Subsidiary and any Governmental Authority, including in connection with any tax liabilities, assessments, governmental charges or levies upon it or its properties or assets; and (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Restricted Subsidiary, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred or are reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect; or

(d) of the incurrence or issuance of any Indebtedness for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(i).

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document, if any, that have been breached.

Section 6.04 *Preservation of Existence, Etc.* (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or Section 7.05; (b) maintain all rights, privileges, permits, and licenses reasonably necessary in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) preserve, maintain, renew and keep in full force and effect all of its registered patents, trademarks, trade names, trade dress and service marks, the failure of which to so preserve, maintain, renew or keep in full force and effect could reasonably be expected to have a Material Adverse Effect; and (d) pay, discharge or otherwise satisfy as the same shall become due and payable all Federal, state and other material Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Restricted Subsidiary.

Section 6.05 *Maintenance of Properties*. (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted, and (b) make all necessary repairs thereto and renewals and replacements thereof, in each case with respect to clauses (a) and (b) except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 6.06 *Maintenance of Insurance*. Maintain with financially sound and reputable insurance companies (that are not Affiliates of the Borrower) insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily

carried under similar circumstances by such other Persons, and providing for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance, which insurance (except as to Excluded Subsidiaries and Immaterial Subsidiaries) shall name the Administrative Agent as loss payee (in the case of casualty insurance) or additional insured (in the case of liability insurance); *provided, however*, if any insurance proceeds are paid on account of a casualty to assets or properties of any Loan Party whether or not constituting Collateral and at such time no Event of Default shall have occurred and is continuing, then the Administrative Agent shall take such actions, including endorsement, to cause any such insurance proceeds to be promptly remitted to the Borrower to be used by the Borrower or such Loan Party in any manner not prohibited by this Agreement.

Section 6.07 *Compliance with Laws*. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Maintain in effect and enforce policies and procedures designed to ensure compliance in all material respects by the Borrower and its Restricted Subsidiaries and their respective directors, officers, and employees with Anti-Corruption Laws and applicable Sanctions.

Section 6.08 *Books and Records*. Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions, and if and to the extent required by GAAP, matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be.

Section 6.09 *Inspection Rights*. Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and to make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably desired (but in no event more than one time per Fiscal Year of the Borrower and with the Borrower being required to pay all reasonable out-of-pocket expenses for one visit each Fiscal Year) by the Administrative Agent, upon reasonable advance notice to the Borrower; *provided, however*, that when an Event of Default exists the Administrative Agent (or any of its respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice, and without limitation as to frequency.

Section 6.10 *Use of Proceeds*. Use the proceeds of (a) the initial Term B Loans to finance the Refinancing and to pay the fees, costs and expenses incurred in connection with the Transactions, (b) the Revolving Credit Loans to pay for the fees, costs and expenses related to the Transactions, to pay accrued but unpaid interest under the Bridge Facility Agreement, to repay amounts outstanding under the Bridge Facility Agreement, and for working capital and general corporate purposes of the Borrower, including without limitation for financing of acquisitions and Investments (in each case, to the extent permitted hereunder); provided that the aggregate amount borrowed on the Closing Date pursuant to clause (b) shall not exceed \$100,000,000 and (c) any other Credit Extensions for working capital, acquisitions, Investments and for other general corporate purposes not in contravention of any Law or of any Loan Document.

Section 6.11 *Covenant to Guarantee Obligations and Give Security.*

(a) Upon the formation or acquisition by any Loan Party of any new direct or indirect Subsidiary (other than any Excluded Subsidiary or any Immaterial Subsidiary), or upon a Subsidiary of any Loan Party ceasing to be an Excluded Subsidiary or ceasing to be an Immaterial Subsidiary, as applicable, the Borrower shall, at the Borrower's expense:

(i) Within 30 days (as such time may be extended by the Administrative Agent in its reasonable discretion) following the creation or acquisition of such Subsidiary or following such Subsidiary ceasing to be an Excluded Subsidiary or ceasing to be an Immaterial Subsidiary, as applicable, cause such Subsidiary to (a) become a Guarantor and provide the Administrative Agent, for the benefit of the Secured Parties, a Lien on its assets (other than Excluded Assets) to secure the Obligations by executing and delivering to the Administrative Agent a joinder to the Collateral Agreement or such other document as the Administrative Agent shall deem appropriate for such purpose and (b) deliver to the Administrative Agent such other customary documentation reasonably requested by the Administrative Agent including, without limitation, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), all in form, content and scope reasonably satisfactory to the Administrative Agent;

(ii) within 30 days after such formation or acquisition or after such Subsidiary ceases to be an Excluded Subsidiary or ceases to be an Immaterial Subsidiary, as applicable, cause each direct and indirect parent (to the extent such parent is a Loan Party) of such Subsidiary to pledge its interests in such Subsidiary to the Administrative Agent, for the benefit of the Secured Parties, to secure such parent's Obligations (if it has not already done so) and deliver to the Administrative Agent all certificated Equity Interests of such Subsidiary (if any) together with transfer powers in respect thereof endorsed in blank, and cause such Subsidiary:

(A) to duly execute and deliver to the Administrative Agent, for the benefit of the Secured Parties, any additional collateral and security agreements or supplements thereto, as reasonably specified by and in form and substance reasonably satisfactory to the Administrative Agent to secure payment of all the Obligations of such Subsidiary and constituting Liens on the personal property (other than Excluded Assets) of such Subsidiary; and

(B) to take whatever action (including the filing of Uniform Commercial Code financing statements) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting first priority perfected Liens on properties purported to be subject to the Collateral Agreement and other agreements delivered pursuant to this Section 6.11, subject to Permitted Prior Liens; and

(iii) within 30 days after such formation or acquisition or after such Subsidiary ceases to be an Excluded Subsidiary or ceases to be an Immaterial Subsidiary, as applicable, deliver to the Administrative Agent, upon the request of the Administrative Agent, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (i) and (ii) above, and as to such other matters as the Administrative Agent may reasonably request.

(b) Notwithstanding any of the foregoing to the contrary or Section 6.15 below, the Collateral shall exclude Excluded Assets and real property and shall be subject to the limitations and exclusions set forth in the applicable Collateral Documents.

Section 6.12 Compliance with Environmental Laws.

Comply, and cause all lessees and other Persons operating or occupying its owned properties to comply with all applicable Environmental Laws and Environmental Permits, except where the failure to so comply would not reasonably be likely to have a Material Adverse Effect; and, if ordered by a final decree to do so by a Governmental Authority or otherwise required in the reasonable opinion of the Borrower pursuant to any Environmental Law, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action reasonably necessary to address to be in material compliance with such final decree or the material requirements of Environmental Laws; *provided, however*, that neither the Borrower nor any of its Restricted Subsidiaries shall be required to undertake any such ordered or required cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

Section 6.13 Environmental Disclosure. The Borrower will deliver to the Administrative Agent:

(a) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of the Borrower or any of its Restricted Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at the Borrower's or any other Loan Party's real property or with respect to any Environmental Claims, in each case, that would reasonably be expected to have a Material Adverse Effect;

(b) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported by the Borrower or any of its Restricted Subsidiaries to any federal, state or local governmental or regulatory agency under any Environmental Laws that would reasonably be expected to have a Material Adverse Effect, (B) any remedial action taken by the Borrower or any of its Restricted Subsidiaries

or any other Persons of which the Borrower or any of its Restricted Subsidiaries has knowledge in response to (1) any Hazardous Materials Activities, the existence of which has a reasonable possibility of resulting in one or more Environmental Claims that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (2) any Environmental Claims that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect and (C) the Borrower's discovery of any occurrence or condition arising under Environmental Law or relating to Hazardous Materials on any real property adjoining or in the vicinity of any facility that reasonably would be expected to have a Material Adverse Effect;

(c) as soon as practicable following the sending or receipt thereof by the Borrower or any of its Restricted Subsidiaries, a copy of any and all non-privileged written communications with respect to (A) any Environmental Claims that, individually or in the aggregate, would reasonably be expected to give rise to a Material Adverse Effect, (B) any Release required to be reported by the Borrower or any of its Restricted Subsidiaries to any federal, state or local governmental or regulatory agency that would reasonably be expected to have a Material Adverse Effect, and (C) any request made to the Borrower or any of its Restricted Subsidiaries for information from any governmental agency that suggests such agency is investigating whether the Borrower or any of its Restricted Subsidiaries may be potentially responsible for any Hazardous Materials Activity which would reasonably be expected to have a Material Adverse Effect;

(d) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by the Borrower or any of its Restricted Subsidiaries that would reasonably be expected to expose the Borrower or any of its Restricted Subsidiaries to, or result in, Environmental Claims that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (B) any proposed action to be taken by the Borrower or any of its Restricted Subsidiaries to modify current operations in a manner that could subject the Borrower or any of its Restricted Subsidiaries to any additional obligations or requirements under any Environmental Law that would reasonably be expected to have a Material Adverse Effect; and

(e) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this [Section 6.13](#).

Section 6.14 Lender Calls. If requested in writing by the Administrative Agent, participate in an annual meeting of the Administrative Agent and the Lenders to be held at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and the Administrative Agent, including by telephonic conference calls) at such time as may be agreed to by the Borrower and the Administrative Agent.

Section 6.15 Further Assurances. Promptly upon request by the Administrative Agent or the Required Lenders through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file,

register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents or Section 6.11, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Restricted Subsidiaries is or is to be a party, and cause each of its Restricted Subsidiaries to do so; *provided* that, notwithstanding the foregoing, the Loan Parties shall not be required to take actions to create or perfect the security interest of the Administrative Agent (x) on any property that is covered by a certificate of title statute of any jurisdiction under the law of which the indication of a security interest on such certificate is required as a condition of perfection thereof, or (y) if recordation of a security interest with the Federal Aviation Administration or the International Registry of Mobile Assets is required as a condition of perfection thereof.

Section 6.16 Ratings. At all times use commercially reasonable efforts to maintain public ratings by Moody's and S&P with respect to the Borrower and the Facilities.

Section 6.17 Designation of Restricted and Unrestricted Subsidiaries. The Borrower may designate any Restricted Subsidiary to be an Unrestricted Subsidiary in accordance with the definition of "Unrestricted Subsidiary"; *provided* that (i) immediately before and after giving effect to such designation, no Event of Default shall have occurred and be continuing, (ii) the Borrower shall be in pro forma compliance with the financial covenant set forth in Section 7.11, and (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a "Restricted Subsidiary" as defined in or in respect of any Indebtedness in excess of the Threshold Amount. All outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the designated Unrestricted Subsidiary will be treated as an Investment by the Borrower or such Restricted Subsidiary, as applicable, made at the time of the designation. The amount of all such outstanding Investments will be the aggregate fair market value of such Investments at the time of the designation. The designation will not be permitted if such Investment would not be permitted under Section 7.02 at that time and if such Restricted Subsidiary does not otherwise meet the definition of an Unrestricted Subsidiary. Any designation of a Subsidiary of the Borrower as an Unrestricted Subsidiary shall be evidenced to the Administrative Agent by delivering to the Administrative Agent a certified copy of the board resolution of the Borrower giving effect to such designation and a certificate signed by a Responsible Officer of the Borrower certifying that such designation complied with the foregoing conditions and the conditions set forth in the definition of "Unrestricted Subsidiary" and was permitted by this Section 6.17, *provided, however*, (i) no Subsidiary may be designated as an Unrestricted Subsidiary if such designated Unrestricted Subsidiary will own any IP Rights and the failure of the Borrower or any of its Restricted Subsidiaries to own such IP Rights could reasonably be expected to have a Material Adverse Effect and (ii) neither the Borrower nor any of its Restricted Subsidiaries shall be permitted to contribute any IP Rights to an Unrestricted Subsidiary if (x) the failure by the Borrower or any of its Restricted Subsidiaries to own such IP Rights could reasonably be expected to have a Material Adverse Effect or (y) after giving effect to such contribution the Borrower would not be in pro forma compliance with the covenant set forth in Section 7.11.

If, at any time, any Unrestricted Subsidiary would fail to meet any of the requirements of an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and (1) any Indebtedness of such Subsidiary, (2) any Liens of such Subsidiary and (3) any Investments of such Subsidiary, in each case shall be deemed to be incurred by a Restricted Subsidiary of the Borrower as of such date and, if such Indebtedness, Liens or Investments are not permitted to be incurred as of such date under Section 7.03, Section 7.01 or Section 7.02 as applicable, the Borrower shall be in default of such Section 7.03, Section 7.01 or Section 7.02 as applicable.

The Borrower may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation shall be deemed to be an incurrence, on the date of designation, of Indebtedness, Liens and Investments by a Restricted Subsidiary of the Borrower of any outstanding Indebtedness, Liens and Investments of such Unrestricted Subsidiary and such designation shall only be permitted if (1) such Indebtedness is permitted under Section 7.03, such Liens are permitted under Section 7.01 and such Investments are permitted under Section 7.02; and (2) no Event of Default shall have occurred and be continuing.

ARTICLE 7. NEGATIVE COVENANTS

From and after the Closing Date, so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than contingent indemnification obligations as to which no claim has been asserted and obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the L/C Issuer have been made) shall remain outstanding, the Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly:

Section 7.01 *Liens*. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document securing the Obligations;

(b) Liens existing on the Closing Date and listed on Schedule 7.01 and any modifications, replacements, renewals or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, and (ii) the modification, replacement, renewal or extension of the obligations secured or benefited thereby, to the extent constituting Indebtedness, is permitted by Section 7.03(b);

(c) Liens for taxes (i) which are (x) not then more than 30 days overdue or (y) being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or (ii) with respect to which the failure to make payment would not reasonably be expected to have a Material Adverse Effect;

(d) carriers', warehousemen's, landlords', mechanics', materialmen's, repairmen's or other like Liens granted or arising in the ordinary course of business (i) which secure amounts not overdue for a period of more than 60 days or if more than 60 days overdue, are unfiled and either no other action has been taken to enforce such Lien or such Liens are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or (ii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting real property which, in the aggregate, do not materially interfere with the ordinary conduct of the business of the applicable Person; and Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrower and its Subsidiaries;

(h) Liens securing judgments, awards and decrees for the payment of money not constituting an Event of Default under Section 8.01(h) or securing appeal or other surety bonds related to such judgments;

(i) (i) Liens securing Indebtedness permitted under Section 7.03(e); *provided* that (A) such Liens do not at any time encumber any property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and (B) the Indebtedness secured thereby does not exceed the cost or fair market value of the property, whichever is lower, being acquired on the date of acquisition, improvements thereto and related expenses; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender on customary terms; and (ii) Liens securing Indebtedness permitted under Section 7.03(t); *provided* that (w) such Liens existed on the property or asset prior to the acquisition thereof by the Borrower or any Restricted Subsidiary or existed on the property or asset of any Person that becomes a Restricted Subsidiary in connection with a Permitted Acquisition or other Investment in the nature of an acquisition (x)

such Lien is not created in connection with such acquisition or such Person becoming a Restricted Subsidiary as a result of such Investment, as the case may be and (y) such Lien shall not encumber any other property or assets of the Borrower or any Restricted Subsidiary (other than any Person acquired by the Borrower or any Restricted Subsidiary as a result of a Permitted Acquisition or other Investment in the nature of an acquisition and any Restricted Subsidiary of such acquired Person as of the date of such Permitted Acquisition or other Investment in the nature of an acquisition);

(j) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower or any Restricted Subsidiary or (ii) secure any Indebtedness;

(k) other Liens on property securing Indebtedness and other obligations in an aggregate principal amount which does not exceed the greater of \$95,000,000 and 50.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b), in the aggregate;

(l) Liens on property of Restricted Subsidiaries that are not Loan Parties securing Indebtedness of such Restricted Subsidiaries that are not Loan Parties permitted by Section 7.03;

(m) Liens arising in connection with a Qualified Receivables Transaction on Receivables Program Assets permitted to be Disposed of pursuant to Section 7.05(l) securing Receivables Program Obligations permitted by Section 7.03(j);

(n) Liens in favor of custom and revenue authorities arising as a matter of law to secure payment of non-delinquent customs duties in connection with the importation of goods;

(o) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of letters of credit and bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(p) (i) Liens arising out of conditional sale, consignment, title retention or similar arrangements for the sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business and (ii) purported Liens evidenced by the filing of UCC financing statements relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business;

(q) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection; (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(r) deposits made in the ordinary course of business to secure liability to insurance carriers, and Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(s) Liens on Cash Collateral granted in favor of any Lenders and/or L/C Issuers created as a result of any requirement or option to Cash Collateralize pursuant to this Agreement;

(t) Liens that are customary contractual rights of setoff (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence of Indebtedness; (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries; or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(u) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies except for such noncompliance that does not materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries; and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(v) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(w) licenses and sublicenses of IP Rights, and Liens under licensing agreements for the use of intellectual property, in each case, either entered into in the ordinary course of business or pursuant to a bona fide transaction intended to increase the revenue of the Borrower and its Restricted Subsidiaries and which could not reasonably be expected to have a Material Adverse Effect;

(x) Liens on cash and Cash Equivalents in an aggregate amount not to exceed the greater of \$75,000,000 and 40.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b) to secure obligations of the Borrower or any Restricted Subsidiary under Swap Contracts that do not constitute Obligations;

(y) Liens on Collateral securing obligations under the documentation for Indebtedness permitted pursuant to Section 7.03(s); *provided that*, if such indebtedness is secured by any or all of the Collateral, such Liens shall be subject to the Pari Passu Intercreditor Agreement, and (if then in effect) the Junior Lien Intercreditor Agreement if such indebtedness is secured on a pari passu basis (without regard to the control of remedies) with the Obligations and, otherwise, to the Junior Lien Intercreditor Agreement;

(z) Liens arising in the ordinary course of business under the Perishable Agricultural Commodities Act of 1930;

(aa) Liens on Equity Interests in joint ventures or Unrestricted Subsidiaries (i) securing obligations of such joint ventures or Unrestricted Subsidiaries or (ii) pursuant to the relevant joint venture agreement or arrangements;

(bb) Liens arising out of sale and lease-back transactions permitted under Section 7.15;

(cc) Liens (i) in favor of the Borrower or any Loan Party granted by a Restricted Subsidiary that is not a Loan Party or (ii) granted by any non-Loan Party in favor of any other non-Loan Party, in the case of each of clauses (i) and (ii), securing intercompany Indebtedness permitted under Section 7.02;

(dd) Liens on cash or Cash Equivalents in respect of ordinary course cash management arrangements; and

(ee) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located.

Section 7.02 *Investments*. Make any Investments, except:

(a) Investments held by the Borrower or such Restricted Subsidiary in the form of cash and Cash Equivalents;

(b) advances to officers, directors, employees and consultants of the Borrower and Restricted Subsidiaries (i) in an aggregate amount not to exceed \$5,000,000 at any time outstanding, for payroll, salary, travel, entertainment, relocation and analogous ordinary business purposes; and (ii) in connection with such Person's purchase of Equity Interests of the Borrower or BRBR, provided that no cash is actually advanced pursuant to this clause (ii) unless promptly repaid;

(c) Investments (i) existing on the Closing Date in Subsidiaries existing on the Closing Date; *provided* that in the case of this clause (i), any such Investments in Restricted Subsidiaries that are not Loan Parties in the form of intercompany loans by Loan Parties if in excess of \$10,000,000 in the aggregate shall be evidenced by notes that have been pledged (individually or pursuant to a global note) to the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent for the benefit of the Secured Parties unless such pledge would, in the good faith judgment of the Borrower, result in adverse tax consequences to the Borrower and its Restricted Subsidiaries as reasonably determined by Borrower in consultation with the Administrative Agent; (ii) in Loan Parties (including those formed or acquired after the Closing Date so long as the Borrower and its Restricted Subsidiaries comply with the applicable provisions of Section 6.11, *provided* that, notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Lien of the Administrative Agent for the benefit of the Secured Parties shall not attach to any such Investment in the form of an intercompany loan and any intercompany note evidencing such loan shall not be required to be

delivered to the Administrative Agent if any such note is subsequently reasonably promptly contributed to a Subsidiary that is not a Loan Party pursuant to Section 7.02(c)(iv)); (iii) by Restricted Subsidiaries that are not Loan Parties in Restricted Subsidiaries that are not Loan Parties; (iv) by the Borrower or any other Loan Party in Unrestricted Subsidiaries, in Restricted Subsidiaries that are not Loan Parties or in other Persons; *provided* that, in the case of this clause (iv), (A) no Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) shall have occurred and be continuing, (B) the Borrower and its Restricted Subsidiaries comply with the applicable provisions of Section 6.11, (C) the aggregate amount of all such Investments outstanding at any time (determined without regard to any write-downs or write-offs of such Investments) shall not exceed the sum of the greater (x) of \$75,000,000 and (y) 40.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b); *provided*, that this clause (C) shall not apply to any such Investment in a Restricted Subsidiary that is not a Loan Party that is in the form of an equity contribution or intercompany loan if, reasonably promptly following receipt of such equity contribution or intercompany loan, the proceeds of such equity contribution or intercompany loan shall be used by such Restricted Subsidiaries that are not Loan Parties (or Restricted Subsidiaries thereof) to consummate a Permitted Acquisition (and any such Investment described in this proviso shall not utilize the basket set forth in this clause (C), but shall, if applicable, utilize the basket set forth in the definition of Permitted Acquisition) and (D) any such Investments in the form of intercompany loans if in excess of \$10,000,000 in the aggregate shall be evidenced by notes that have been pledged (individually or pursuant to a global note) to the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent for the benefit of the Secured Parties unless (x) such pledge would, in the good faith judgment of the Borrower, result in adverse tax consequences to the Borrower and its Restricted Subsidiaries as reasonably determined by Borrower in consultation with the Administrative Agent or (y) reasonably promptly following the making of such intercompany loan the holder of such note representing such loan contributes such note as an equity contribution to any Restricted Subsidiary that is not a Loan Party that will reasonably promptly following receipt of such equity contribution consummate (or cause one or more of its Restricted Subsidiaries to consummate) a Permitted Acquisition, in which case and in each such case, notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Lien of the Administrative Agent for the benefit of the Secured Parties shall not attach to any such note, and any such note shall not be required to be delivered to the Administrative Agent;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) (i) any Investments by the Borrower or any Guarantor in the form of Permitted Acquisitions, and (ii) any Permitted Acquisition by any Restricted Subsidiary that is not a Loan Party (or any Restricted Subsidiary thereof) funded from, reasonably promptly following receipt thereof, the cash proceeds received by such Restricted Subsidiary (or any parent entity(ies) thereof that is also a Restricted Subsidiary and that received such proceeds in accordance with Section 7.02(c)(iv)) from any equity contribution or intercompany loan permitted under Section 7.02(c)(iv), and (iii) any Investment in or of any Person acquired by, or merged into or

consolidated or amalgamated with, the Borrower or any Restricted Subsidiary after the Closing Date (other than an Investment in connection with a Permitted Acquisition in Persons who do not become Loan Parties), in each case pursuant to an Investment otherwise permitted by this Section 7.02 after the Closing Date to the extent that such Investments of such Person were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation, and any modification, replacement, renewal or extension of any Investment permitted under clause (iii) of this Section 7.02(e) so long as any such modification, replacement, renewal or extension thereof does not increase the amount of such Investment except as otherwise permitted by this Section 7.02;

(f) Guarantees of Indebtedness permitted by Section 7.03;

(g) to the extent constituting Investments, transactions expressly permitted under Sections 7.04 (other than Section 7.04(c)) and 7.14;

(h) Investments existing on, or made pursuant to legally binding written commitments in existence on, the Closing Date and set forth on Schedule 7.02 and any modification, replacement, renewal or extension thereof; *provided*, that the amount of the original Investment is not increased except by the terms of such Investment or as otherwise permitted by this Section 7.02 and the terms and conditions of such modified, replacement, renewed or extended Investment shall not be materially less favorable, taken as a whole, to the Loan Parties than the Investment being modified, replaced, renewed or extended;

(i) promissory notes, property (tangible or intangible) and other non-cash consideration received in connection with Dispositions permitted by Section 7.05;

(j) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business and upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(k) Investments to the extent that payment for such Investments is made solely by the issuance of Equity Interests of the Borrower, BRBR or a Subsidiary (unless the issuance of Equity Interests in a Subsidiary is prohibited by Section 7.05), in each case, to the extent not resulting in a Change of Control;

(l) Restricted Subsidiaries of the Borrower may be established or created if the Borrower and such Restricted Subsidiary comply with the requirements of Section 6.11, if applicable; *provided* that, in each case, to the extent such new Restricted Subsidiary is created solely for the purpose of consummating a transaction pursuant to an acquisition permitted by this Section 7.02, and such new Restricted Subsidiary at no time holds any assets or liabilities other than any merger or acquisition consideration contributed to it contemporaneously with the closing of such transactions, such new Restricted Subsidiary shall not be required to take the actions set forth in Section 6.11, as applicable, until the applicable acquisition is consummated (at which time the surviving entity of the applicable transaction shall be required to so comply in accordance with the provisions thereof);

(m) Investments in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person, in each case, (i) in connection with a Qualified Receivables Transaction and (ii) constituting a Disposition permitted pursuant to Section 7.05(l);

(n) Swap Contracts to the extent permitted pursuant to Section 7.03(d);

(o) other Investments; *provided* that in no event shall the aggregate amount of Investments allowed pursuant to this Section 7.02(o) during the term of this Agreement exceed the sum of (1) so long as no Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing or would be caused thereby, the greater of (x) \$95,000,000 and (y) 50.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b) plus (2) an amount not to exceed the Available Amount at the time of the making of such Investment; *provided* that the portion of the Available Amount attributed to clause (a)(1) of the definition thereof shall not be available for any such Investments made pursuant to this clause (o)(2) if an Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing or would be caused thereby;

(p) Investments in Term Loans pursuant to Section 10.06(b)(vii);

(q) Investments consisting of the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(r) Investments so long as (i) no Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing or would be caused thereby and (ii) the pro forma Total Net Leverage Ratio would be less than 3.00:1.00;

(s) Investments (i) constituting deposits, prepayments and other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts and (iii) in the form of advances made to distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business or, in the case of clause (iii), to the extent necessary to maintain the ordinary course of supplies to the Borrower or any Restricted Subsidiary;

(t) the Transactions;

(u) Investments in any Restricted Subsidiary in connection with reorganizations and related activities related to Tax planning; *provided* that, after giving effect to any such reorganization and related activities, the Lien of the Administrative Agent in the Collateral and the value thereof, taken as a whole, is not materially impaired and after giving effect to such Investment, the Borrower and its Restricted Subsidiaries shall otherwise be in compliance with Section 6.11;

(v) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that they are permitted to remain unfunded under applicable law;

(w) Investments in the Borrower or any Restricted Subsidiary in connection with intercompany cash management arrangements and related activities in the ordinary course of business;

(x) Investments in any Parent Company in amounts and for purposes for which Restricted Payments by the Borrower are permitted under Section 7.06(e); provided that any such Investments made as provided above in lieu of such Restricted Payments shall reduce availability under the applicable Restricted Payment basket under Section 7.06(e); and

(y) Investments consisting of the licensing or sublicensing of IP Rights in each case, either entered into in the ordinary course of business or pursuant to a bona fide transaction intended to increase the revenue of the Borrower and its Restricted Subsidiaries and which could not reasonably be expected to have a Material Adverse Effect.

Section 7.03 *Indebtedness*. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents, including, without limitation, Incremental Term Loans, Incremental Revolving Loans and any Refinancing Facility;

(b) Indebtedness outstanding on the Closing Date and listed on Schedule 7.03 and any Permitted Refinancing thereof; *provided* that any such Indebtedness (including any Permitted Refinancing thereof), to the extent owed by a Loan Party to a Restricted Subsidiary that is not a Loan Party, shall be unsecured and subordinated to the payment of the Obligations in a manner reasonably satisfactory to the Administrative Agent;

(c) (i) Guarantees by the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any Guarantor; (ii) Guarantees by any Restricted Subsidiary that is not a Loan Party in respect of Indebtedness otherwise permitted hereunder of the Borrower or any Restricted Subsidiary; and (iii) Guarantees by the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of Restricted Subsidiaries that are not Loan Parties to the extent such Guarantee constitutes an Investment permitted by Sections 7.02(c)(i), (c)(iv), 7.02(o) or 7.02(r);

(d) obligations (contingent or otherwise) of the Borrower or any Restricted Subsidiary existing or hereafter arising under any Swap Contract; *provided* that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation; and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party (other than pursuant to customary netting or set-off provisions and except as contemplated by Section 10.23);

(e) Indebtedness of the Borrower or any Restricted Subsidiary in respect of Capital Leases and purchase money obligations for fixed or capital assets, which may be secured by Liens under and within the applicable limitations set forth in Section 7.01(i); *provided, however*, that the aggregate amount of all such Indebtedness at any one time outstanding pursuant to this clause (e) shall not exceed the greater of (x) \$48,000,000 and (y) 25.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b);

(f) Indebtedness of the Borrower or any Restricted Subsidiary owing to the Borrower or any Restricted Subsidiary to the extent constituting an Investment permitted by Section 7.02(c), 7.02(o) or 7.02(r); *provided* that, such Indebtedness, to the extent owed by a Loan Party to a Restricted Subsidiary that is not a Loan Party, shall be subordinated to the payment of the Obligations in a manner reasonably satisfactory to the Administrative Agent;

(g) the aggregate principal outstanding amount of all Non-Guarantor Debt if such amount does not exceed the Non-Guarantor Debt Cap;

(h) [Reserved];

(i) other Indebtedness of the Borrower and its Restricted Subsidiaries in an aggregate principal amount not to exceed the greater of (x) \$95,000,000 and (y) 50.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b); *provided* that the aggregate principal outstanding amount of all Non-Guarantor Debt does not exceed the Non-Guarantor Debt Cap;

(j) Indebtedness in respect of Receivables Program Obligations in an amount not to exceed the greater of (x) \$75,000,000 and (y) 40.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b); *provided* that no Event of Default shall have occurred and be continuing at the time such Indebtedness is incurred;

(k) Indebtedness of the Borrower or any of its Restricted Subsidiaries consisting of obligations to pay insurance premiums or take-or-pay obligations contained in supply arrangements incurred in the ordinary course of business;

(l) Indebtedness consisting of obligations of the Borrower or its Restricted Subsidiaries under deferred consideration or other similar arrangements (including earn-outs, indemnifications, incentive non-competes and other contingent obligations and agreements consisting of the adjustment of purchase price or similar adjustments) incurred by such Person in connection with any Permitted Acquisition or Disposition permitted by Section 7.05 or any other Investment permitted under Section 7.02;

(m) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of bank guarantees, warehouse receipts or similar instruments (other than letters of credit) issued or created in the ordinary course of business consistent with past practice, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, or other Indebtedness with respect to reimbursement type obligations (other than obligations in respect of letters of credit) regarding workers compensation claims;

(n) Indebtedness or obligations in respect of performance and completion guaranties, or customs, stay, performance, bid, surety, statutory, appeal, performance and return of money bonds, tenders, statutory obligations, leases, governmental contracts, trade contracts or other similar obligations incurred in the ordinary course of business and, in each case, not in respect of borrowed money or in respect of any letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments to support any of the foregoing items;

(o) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(p) Indebtedness in respect of commercial credit cards, stored value cards, purchasing cards and treasury management services, and other netting services, overdraft protections and overdraft facilities, automated clearing-house arrangements, employee credit card programs, corporate cards and purchasing cards, controlled disbursement, ACH transactions, return items, interstate depository network service, cash pooling and operational foreign exchange management, and, in each case, similar arrangements and otherwise in connection with cash management arrangements, including cash management arrangements among the Borrower and its Restricted Subsidiaries, including Indebtedness arising under or in connection with any Cash Management Agreement with a Cash Management Bank;

(q) Indebtedness incurred under commercial letters of credit issued for the account of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business (and not for the purpose of, directly or indirectly, incurring Indebtedness or providing credit support or a similar arrangement in respect of Indebtedness) or Indebtedness of the Borrower or any of its Restricted Subsidiaries under letters of credit and bank guarantees backstopped by Letters of Credit issued under this Agreement;

(r) Indebtedness representing deferred compensation to employees of the Borrower or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(s) (A) Indebtedness incurred or issued by the Borrower or by any Restricted Subsidiary of the Borrower in an amount not to exceed in the aggregate the Incremental Available Amount (such debt, "**Incremental Equivalent Debt**"); *provided that*,

(i) no Event of Default shall exist before or after giving effect to the incurrence of such Incremental Equivalent Debt;

(ii) such Incremental Equivalent Debt shall not be Guaranteed by any Person that is not a Guarantor;

(iii) if such Incremental Equivalent Debt is in the form of loans secured by any or all of the Collateral on a pari passu basis with the Liens securing the Obligations hereunder, such Incremental Equivalent Debt shall be subject to Section 2.14(d)(ii) as if such Incremental Equivalent Debt were a Class of Incremental Term Loans;

(iv) the terms of such Incremental Equivalent Debt shall not be more restrictive, taken as a whole, to the Borrower and its Restricted Subsidiaries than those applicable to any Facility at the time of incurrence of such Incremental Equivalent Debt, unless (x) such other terms apply only after the Latest Maturity Date at the time of incurrence of such Incremental Equivalent Debt, (y) this Agreement is amended so that such terms are also applicable for the benefit of any Lenders under the then-existing Facilities or (z) such other terms relate only to pricing, fees or redemption terms;

(v) (x) if such Incremental Equivalent Debt is secured on a pari passu basis with the Liens securing the Obligations hereunder, the stated maturity of such Incremental Equivalent Debt shall be no earlier than the Latest Maturity Date at the time of incurrence of such Incremental Equivalent Debt and the Weighted Average Life to Maturity of such Incremental Equivalent Debt shall be no shorter than the remaining Weighted Average Life to Maturity of any then-existing Facility hereunder and (y) if such Incremental Equivalent Debt is secured on a junior basis to the Liens securing the Obligations hereunder or is unsecured, the stated maturity of such Incremental Equivalent Debt is not less than 91 days following the Latest Maturity Date at the time of incurrence of such Incremental Equivalent Debt and the Weighted Average Life to Maturity of such Incremental Equivalent Debt shall be no shorter than the remaining Weighted Average Life to Maturity of any then-existing Facility hereunder;

(vi) the aggregate principal outstanding amount of all Non-Guarantor Debt does not exceed the Non-Guarantor Debt Cap;

(vii) the Borrower shall deliver or cause to be delivered legal opinions and such other documents reasonably requested by the Administrative Agent in connection with such transaction; and

(viii) if such Incremental Equivalent Debt is secured, the representative and collateral trustee acting on behalf of the holders of such Incremental Equivalent Debt shall have executed and delivered to the Administrative Agent (x) a joinder to the Pari Passu Intercreditor Agreement and (if then in effect) the Junior Lien Intercreditor Agreement (if such Incremental Equivalent Debt is secured by any or all of the Collateral on a pari passu basis (without regard to control of remedies) with the Obligations hereunder) in accordance with the terms hereof and (y) a joinder to the Junior Lien Intercreditor Agreement (if such Incremental Equivalent Debt is secured by any or all of the Collateral on a junior basis to the Obligations hereunder) in accordance with the terms thereof; *provided* that if such Indebtedness is the initial issuance of Indebtedness that would cause such documents to be executed, then the Borrower, the Guarantors, the Administrative Agent and the representative and collateral trustee for such Other First Lien Obligations shall have executed and delivered the Pari Passu Intercreditor Agreement and/or the Junior Lien Intercreditor Agreement, as applicable and

(B) Permitted Refinancing of any Indebtedness incurred under the foregoing clause (A) (provided that any such Permitted Refinancing of any such Indebtedness that was initially incurred in reliance on clause (a) of the definition of Incremental Available Amount (or any Permitted Refinancing thereof) shall continue to be deemed to be a utilization of such clause (a) for purposes hereof);

(t) (x) Indebtedness assumed in connection with a Permitted Acquisition or other Investment in the nature of an acquisition so long as (i) such Indebtedness existed prior to the consummation of such Permitted Acquisition or other Investment in the nature of an acquisition, (ii) such Indebtedness is not created in contemplation of such Permitted Acquisition or other Investment in the nature of an acquisition, (iii) such Indebtedness is solely the obligation of such Person, and not of the Borrower or any other Restricted Subsidiary (other than any Person acquired by the Borrower or any Restricted Subsidiary as a result of such Permitted Acquisition or other Investment in the nature of an acquisition and any Restricted Subsidiary of such acquired Person as of the date of such Permitted Acquisition or other Investment in the nature of an acquisition) and (iv) if such Indebtedness (excluding leases) is secured, the pro forma Secured Net Leverage Ratio would not exceed the greater of 4.10:1.00 and if such Indebtedness (excluding leases) is unsecured, the pro forma Total Net Leverage Ratio would not exceed the greater of 4.10:1.00 and (y) Permitted Refinancings of any Indebtedness assumed under the foregoing clause (x);

(u) (i) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services, (ii) Indebtedness in respect of any letter of credit, bankers' acceptance, bank guaranty or similar instrument supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business, and (iii) Indebtedness consisting of obligations owing under any customer or supplier incentive, supply, license or similar agreements entered into in the ordinary course of business;

(v) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the ordinary course of business to the extent that the unfunded amounts would not otherwise cause an Event of Default under Section 8.01(i);

(w) customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business;

(x) without duplication of any other Indebtedness, all premiums (if any), interest (including post-petition interest and payment in kind interest), accretion or amortization of original issue discount, fees, expenses and charges with respect to Indebtedness permitted hereunder; and

(y) Indebtedness incurred in connection with sale and leaseback transactions permitted pursuant to Section 7.15.

Section 7.04 *Fundamental Changes*. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) the Borrower; *provided* that the Borrower shall be the continuing or surviving Person and (ii) any Subsidiary; *provided* that (A) when any wholly-owned Subsidiary is merging with another Subsidiary, a wholly-owned Subsidiary shall be the continuing or surviving Person, (B) when any Restricted Subsidiary is merging with another Subsidiary, either (I) a Restricted Subsidiary shall be the continuing or surviving Person or (II) an Unrestricted Subsidiary shall be the continuing or surviving person (if such Person shall be permitted to be designated as an Unrestricted Subsidiary hereunder (other than pursuant to Section 7.02(g))), (C) when any Guarantor is merging with another Subsidiary, the continuing or surviving Person shall either (I) be a Guarantor or (II) a Loan Party, and (D) if as a result thereof, the Borrower owns, directly or indirectly, less of such Subsidiary's equity interests than it did prior to the merger, such merger shall also constitute a Disposition subject to Section 7.05 (and must be permitted by any clause thereof other than Section 7.05(d) or (g)(A));

(b) (i) any Subsidiary may merge, amalgamate, liquidate, dissolve or change its form if the Borrower determines in good faith that such merger, amalgamation, liquidation, dissolution or change in form (x) is in the best interests of the Borrower and (y) is not materially disadvantageous to the Lenders; *provided* that that in the case of a merger, amalgamation, dissolution or liquidation of a Loan Party that results in a distribution of assets to a Subsidiary that is not a Loan Party, such distribution shall be treated as an Investment and shall comply with Section 7.02 and (ii) any Subsidiary may merge, dissolve, liquidate or consolidate, so long as the purpose thereof is to effect a Disposition permitted pursuant to Section 7.05 (other than Section 7.05(d) or (g)(A));

(c) the Borrower or any Restricted Subsidiary may consummate any Permitted Acquisition or any other Investment permitted by Section 7.02; *provided* that (i) in any such transaction involving the Borrower, the Borrower shall be the continuing or surviving Person; and (ii) in any such transaction involving a Guarantor, the continuing or surviving Person shall be a Guarantor or a Loan Party; and

(d) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution or otherwise) (i) to the Borrower or to a Guarantor; or (ii) if the transferor is not a Guarantor, to any other Restricted Subsidiary; *provided* in each case that (A) if the transferor in such a transaction is a wholly-owned Subsidiary, then the transferee must either be the Borrower or one or more wholly-owned Subsidiaries, (B) if the transferor in such a transaction is a wholly-owned Restricted Subsidiary, then the transferee must either be the Borrower or one or more wholly-owned Restricted Subsidiaries and (C) to the extent that the transferee is not the Borrower or one or more wholly-owned Restricted Subsidiaries (based on the percentage of such transferee which is not owned directly or indirectly by the Borrower), the Disposition shall constitute a Disposition subject to Section 7.05 and shall be permitted under this Section 7.04 so long as it is permitted by any clause of Section 7.05 other than Section 7.05(d) or (g)(A).

Section 7.05 *Dispositions*. Make any Disposition or enter into any agreement to make any Disposition, in each case, having a fair market value in excess of the greater of (i) \$9,000,000 and (ii) 5.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b), in a single transaction or in a related series of transactions, except:

(a) Dispositions of surplus, obsolete, used or worn out property, whether now owned or hereafter acquired in the ordinary course of business and Dispositions of property (including, without limitation, real estate and related improvements) no longer used or useful in the conduct of the business of the Borrower and its Restricted Subsidiaries (including allowing any registrations or any applications for registration of any immaterial intellectual property to lapse or go abandoned);

(b) (x) Dispositions of inventory or equipment in the ordinary course of business and (y) the leasing or subleasing of real property in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of other property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by the Borrower to any Restricted Subsidiary, or by any Restricted Subsidiary to the Borrower or to a Restricted Subsidiary; *provided* that if the transferor of such property is the Borrower or a Guarantor, the transferee thereof must either be the Borrower or a Guarantor;

(e) Dispositions of accounts receivable for purposes of collection or forgiveness or discounting of accounts receivable in the ordinary course of business;

(f) Dispositions of investment securities, cash and Cash Equivalents in the ordinary course of business;

(g) (A) Dispositions permitted by Section 7.04 (other than Section 7.04(a)(ii)(D), Section 7.04(b) or Section 7.04(d)(ii)(C)); (B) Dispositions that constitute Investments permitted by Section 7.02 (other than Section 7.02(g)); and (C) Dispositions that constitute Restricted Payments permitted by Section 7.06;

(h) (i) Dispositions, licensing, sublicensing and cross-licensing arrangements, in each case, involving any technology or IP Rights of the Borrower or any Restricted Subsidiary in each case, either entered into in the ordinary course of business or pursuant to a bona fide transaction intended to increase the revenue of the Borrower and its Restricted Subsidiaries and which could not reasonably be expected to have a Material Adverse Effect, (ii) the Disposition, abandonment, cancellation or lapse of IP Rights, or any issuances or registrations, or applications for issuances or registrations, of any IP Rights, which, in the reasonable good faith determination of the Borrower or its Restricted Subsidiaries are no longer economically practicable to maintain, worth the cost of maintaining, or used or useful in any material respect, (iii) Dispositions of IP Rights through expiration in accordance with their respective statutory terms, or (iv) Dispositions,

licensing, sublicensing and cross-licensing arrangements involving any technology or IP Rights of (A) the Borrower or any Restricted Subsidiary that is a Loan Party to the Borrower or any Restricted Subsidiary that is a Loan Party, or (B) any Restricted Subsidiary that is not a Loan Party to the Borrower or any Restricted Subsidiary that is not a Loan Party;

(i) transfers of condemned property as a result of the exercise of “eminent domain” or other similar policies to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of property that has been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(j) Dispositions by the Borrower and its Restricted Subsidiaries of property not otherwise permitted under this Section 7.05 (but in any event excluding Receivables Program Assets); *provided* that with respect to any Disposition with a purchase price in an aggregate amount (with respect to any single Disposition or series of related Dispositions) in excess of the greater of (i) \$13,000,000 and (ii) 7.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b), (i) at the time of such Disposition and after giving effect thereto, no Event of Default shall exist or would result from such Disposition as of the date of the agreement governing such Disposition, (ii) the consideration received for such property shall be in an amount at least equal to the fair market value thereof and (iii) no less than 75% of such consideration shall be paid in cash; *provided, however*, that for the purposes of clause (iii), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower’s or the applicable Restricted Subsidiary’s most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Obligations) that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by the Borrower or the applicable Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days (or such longer period as the Administrative Agent may agree) following the closing of the applicable Disposition and (C) any Designated Non-Cash Consideration received any in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is at that time outstanding, not in excess of the greater of (i) \$20,000,000 and (ii) 10.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b);

(k) Dispositions by the Borrower and its Restricted Subsidiaries of property acquired after the Closing Date in Permitted Acquisitions; *provided* that (i) the Borrower identifies any such assets to be divested in reasonable detail in writing to the Administrative Agent within 180 days (or such longer period as the Administrative Agent may agree) following the closing of such Permitted Acquisition and (ii) the fair market value of the assets to be divested in connection with any Permitted Acquisition does not exceed an amount equal to 35.00% of the total cash and non-cash consideration for such Permitted Acquisition;

(l) Dispositions of Receivables Program Assets in connection with a Qualified Receivables Transaction; *provided* that (i) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof, (ii) the outstanding amount of Indebtedness in respect of Receivables Program Obligations shall not exceed the maximum amount permitted to be outstanding under Section 7.03(j), and (iii) no Event of Default shall have occurred and be continuing at the time such Disposition is made;

(m) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business or the termination thereof which (i) do not interfere in any material respect with the business of the Borrower or any Restricted Subsidiary or (ii) relate to closed branches or manufacturing facilities or the discontinuation of any product or service line;

(n) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(o) Dispositions of Investments in joint ventures or any Subsidiary that is not a wholly-owned Subsidiary to the extent required by, or made pursuant to, buy/sell arrangements between the joint venture or similar parties set forth in joint venture arrangements and similar binding arrangements;

(p) (i) termination of leases in the ordinary course of business, (ii) the expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims (including in tort) in the ordinary course of business;

(q) any merger, consolidation, Disposition or conveyance the sole purpose of which is to reincorporate or reorganize (i) any Domestic Subsidiary in another jurisdiction in the United States. or (ii) any Foreign Subsidiary in the United States or any other jurisdiction;

(r) Dispositions of assets in connection with the closing or sale of an office in the ordinary course of business of the Borrower and its Restricted Subsidiaries, which consist of leasehold interests in the premises of such office, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such office; provided that as to each and all such sales and closings, (i) on the date on which the agreement governing such Disposition is executed, no Event of Default shall result and (ii) such sale shall be on commercially reasonable prices and terms in a bona fide arm's-length transaction;

(s) the Disposition of aircrafts, motor vehicles, trailers, cabs, and information technology equipment;

(t) sale and leaseback transactions permitted pursuant to Section 7.15;

(u) exchanges or swaps, including transactions covered by Section 1031 of the Code (or any comparable provision of any foreign jurisdiction), of property or assets so long as the exchange or swap is made for fair value (as reasonably determined by the Borrower) for like property or assets; provided that (i) within 90 days of any such exchange or swap, in the case of any Loan Party and to the extent such property does not constitute an "Excluded Asset", the Administrative Agent has a perfected Lien having the same priority as any Lien held on the assets so exchanged or swapped; and

(v) terminations of Swap Contracts.

Section 7.06 *Restricted Payments*. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower, the Guarantors and any other Person (including any other Restricted Subsidiary) that owns an Equity Interest in such Restricted Subsidiary ratably according to their respective holdings of the relevant class of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in Qualified Equity Interests of such Person, in the case of a Restricted Subsidiary, ratably to each Person that owns an Equity Interest in such Restricted Subsidiary of the class of Equity Interest in respect of which the Restricted Payment is being made;

(c) the Borrower and each Restricted Subsidiary may purchase, redeem or otherwise acquire or retire Equity Interests issued by it with the proceeds (whether in cash or Equity Interests) received from the substantially concurrent issue of new Qualified Equity Interests issued by it or Equity Interests of any Parent Company or Post;

(d) the Borrower and each Restricted Subsidiary may make Restricted Payments pursuant to and in accordance with their stock option, stock purchase and other benefit plans of general application to management, directors or other employees of the Borrower and its Restricted Subsidiaries, as adopted or implemented in the ordinary course of business;

(e) the Borrower may (i) declare and make dividends or distributions to its stockholders, partner or members in respect of Qualified Equity Interests and (ii) purchase, redeem, retire or otherwise acquire for Qualified Equity Interests issued by it in an aggregate amount with respect to clauses (i) and (ii) collectively from and after the Closing Date not to exceed the sum of (1) so long as no Event of Default shall have occurred and be continuing at the time of any action described in this clause (e) or would result therefrom, the greater of \$38,000,000 and 20.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b) plus (2) an amount not to exceed the Available Amount at the time of the making of such dividend, distribution, retirement, purchase, redemption or acquisition; provided that, the portion of the Available Amount attributed to clause (a)(1) of the definition thereof shall not be available for any such Restricted Payment made pursuant to this clause (e)(2) if (i) the pro forma Total Net Leverage Ratio would be greater than 4.10:1.00 or (ii) an Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) shall have occurred and be continuing at the time of any action described in this clause (e) or would result therefrom;

(f) so long as no Event of Default shall have occurred and be continuing at the time of any action described in this clause (f) or would result therefrom, the Borrower may declare and make cash dividends or distributions to its stockholders, partners or members in respect of Disqualified Equity Interests;

(g) Investments pursuant to Section 7.02(c) shall be permitted;

(h) non-cash repurchases of Equity Interests of the Borrower deemed to occur (i) upon the non-cash exercise of stock options and warrants or similar equity incentive awards, and (ii) in connection with the withholding of a portion of the Equity Interests granted or awarded to a director or an employee to pay for the taxes payable by such director or employee upon such grant or award shall be permitted;

(i) the Borrower or any of its Restricted Subsidiaries may (i) pay cash in lieu of fractional shares in connection with any dividend, distribution split or combination thereof or any Permitted Acquisition and (ii) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion;

(j) the payment of dividends and distributions within ninety (90) days after the date of declaration thereof, if at the date of declaration of such payment, such payment would have complied with the other provisions of this Section 7.06 shall be permitted;

(k) the purchase, redemption, acquisition, cancellation or other retirement for a nominal value per right of any rights granted to all holders of Equity Interests of the Borrower pursuant to any shareholders' or members' rights plan adopted for the purpose of protecting shareholders from unfair takeover tactics shall be permitted; *provided* that any such purchase, redemption, acquisition, cancellation or other retirement of such rights is not for the purpose of evading the limitations of this covenant (all as determined in good faith by a Responsible Officer that is a senior financial officer of the Borrower);

(l) [reserved]; and

(m) unlimited Restricted Payments shall be permitted so long as (i) no Event of Default shall exist before or after giving effect to such Restricted Payment and (ii) the pro forma Total Net Leverage Ratio would be less than 3.00:1.00;

(n) the Borrower may make Restricted Payments to the extent necessary to permit any Parent Company to pay (i) general administrative fees, costs and expenses (including corporate overhead, corporate maintenance, insurance premiums, audit and other accounting and reporting fees, costs and expenses, SEC fees, costs and expenses, legal or similar fees, costs and expenses and customary wages, salary, bonus and other benefits payable to directors, officers, employees, members of management, consultants and/or independent contractors of any Parent Company, fees, costs and expenses in connection with debt or equity offerings (whether or not consummated), and fees, costs and expenses in connection with Investments (whether or not consummated), in the case of such Investments or debt or equity offerings, so long as and to the

extent that such Investments or the proceeds of such debt or equity offerings are contributed or were intended to be contributed (if such Investment, debt or equity offerings were not consummated) to the Borrower or its Restricted Subsidiaries), in each case, which are reasonable and customary and incurred in the ordinary course of business by such Parent Company, and (ii) any reasonable and customary indemnification claims made by current or former directors, officers, members of management, employees or consultants of any Parent Company, in the case of each of clauses (i) and (ii), solely to the extent (1) attributable to the ownership by such Parent Company of the Borrower and/or its Subsidiaries or to the payment by such Parent Company of any of such expenses on behalf of the Borrower and its Subsidiaries and (2) that the Borrower and its Restricted Subsidiaries have not otherwise made payments to such Parent Company or any of its Affiliates in respect of such fees, costs and expenses whether pursuant to the Formation Documents or otherwise; provided that Restricted Payments under this clause (n) that are attributable to any Unrestricted Subsidiary shall be permitted only to the extent that either (x) such Unrestricted Subsidiary has made one or more cash distributions, advances or loans to the Borrower or any of its Restricted Subsidiaries for such purpose in an amount up to the amount of such Unrestricted Subsidiary's proportionate share of such fees, costs and expenses or (y) the amount of such Restricted Payments made by the Borrower on behalf of such Unrestricted Subsidiary is treated as an Investment subject to Section 7.02 hereof;

(o) the Borrower may make Tax and Related Distributions;

(p) the Borrower may make Restricted Payments to any Parent Company to enable such Parent Company to make Restricted Payments consisting of (1) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of such Parent Company or (2) (A) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management, managers or consultants of the Borrower, any Subsidiary or Parent Company or any of their respective Immediate Family Members in respect of their purchase of Equity Interests of such Parent Company and/or (B) repurchases of Equity Interests in consideration of the payments described in clause (A), including demand repurchases in connection with the exercise of stock options; provided that, for purposes of this clause (p), Restricted Payments shall only be made to a Parent Company that owns no Equity Interests in any other Person other than the Borrower and its Subsidiaries;

(q) the Borrower may repurchase (or make Restricted Payments to any Parent Company to enable it to repurchase) its Equity Interests upon the exercise of options or warrants or other securities convertible into or exchangeable for Equity Interests if such Equity Interests represent all or a portion of the exercise price of such options or warrants or other securities as part of a "cashless" exercise;

(r) the Borrower may make Restricted Payments the proceeds of which are applied (A) on or prior to the date that is 60 days after the Closing Date, solely to effect the consummation of the Transactions and (B) on or prior to the date that is 60 days after the Closing Date, to satisfy any payment obligations owing in connection with the Transactions;

(s) the Borrower or any Restricted Subsidiary may make Restricted Payments pursuant to the Formation Documents (as in effect on the date of this Agreement, or as amended, modified or restated from time to time in a manner not materially adverse to the interests of the Lenders), including, without limitation, all indemnity payments thereunder, all fees, costs and expenses thereunder, and all other payments and reimbursements owed thereunder, in each case whether currently due or paid in respect of accruals from prior periods, and with respect to any of the foregoing, may pay such amounts to or on behalf of any Parent Company, provided, however, that Restricted Payments made pursuant to Article IV of the Tax Receivable Agreement shall not exceed \$100,000,000 in the aggregate; and

(t) the Borrower may make one or more Restricted Payments to Post upon the redemption by the Borrower of Equity Interests in the Borrower owned by Post in an amount not to exceed in the aggregate the amount of the proceeds contributed in cash to the Borrower by BRBR resulting from the exercise(s) by the underwriters named in the Registration Statement of the option, described in the Registration Statement under the heading "Underwriting (Conflicts of Interest)," to acquire Equity Interests of BRBR; provided that such Restricted Payment shall only be permitted if such Restricted Payment is made on or prior to the date which is 120 days after receipt of such proceeds by the Borrower.

Section 7.07 *Change in Nature of Business*. Engage in any material line of business substantially different from the Permitted Business.

Section 7.08 *Transactions with Affiliates*. Enter into any transaction of any kind involving, pursuant to any such transaction, payments in excess of the greater of (i) \$9,000,000 and (ii) 5.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b) in any Fiscal Year with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms not materially less favorable to the Borrower or such Restricted Subsidiary than would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, *provided* that the foregoing restriction shall not apply to:

(a) transactions between or among Loan Parties or between and among Restricted Subsidiaries that are not Loan Parties;

(b) Qualified Receivables Transactions otherwise permitted hereunder;

(c) the payment of reasonable fees, expenses, indemnities, and compensation (including equity compensation) to and insurance provided on behalf of current, former and future officers, employees, managers, and directors of the Borrower or any of its Restricted Subsidiaries and indemnification agreements entered into by the Borrower or any of its Restricted Subsidiaries;

(d) employment and severance arrangements with current, former and future officers and employees and transactions pursuant to stock option plans and employee benefit plans and arrangements in the ordinary course of business;

(e) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect;

(f) Restricted Payments made pursuant to Section 7.06;

(g) transactions between or among Loan Parties and Restricted Subsidiaries who are not Loan Parties provided any such transaction does not adversely impact the Collateral securing the Obligations or the guarantees of the Obligations, impair the rights of or benefits or remedies available to the Secured Parties under any Loan Document or result in (and are not reasonably expected to result in) a Material Adverse Effect; *provided* that, during the continuance of an Event of Default, any amounts payable by a Loan Party to a Restricted Subsidiary that is not a Loan Party in connection with any such transactions shall be subordinated to the payment of the Obligations;

(h) the pledge of Equity Interests of Unrestricted Subsidiaries;

(i) the assumption of the obligations arising under the Bridge Facility Agreement by the Borrower from Post;

(j) any issuance, sale or grant of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body) of the Borrower or any Restricted Subsidiary;

(k) (i) any collective bargaining agreements, employment agreements or arrangements, severance agreements or compensatory (including profit sharing) arrangements entered into by the Borrower or any of its Restricted Subsidiaries with their respective current or former officers, directors, members of management, managers, employees, consultants or independent contractors or those of any Parent Company, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current or former officers, directors, members of management, managers, employees, consultants or independent contractors and (iii) transactions pursuant to any employee compensation arrangement, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers current or former officers, directors, members of management, employees, consultants or independent contractors;

(l) the Transactions, including the payment of any fees, costs, expenses, indemnity or similar obligations with respect thereto;

(m) Guarantees permitted by this Agreement;

(n) licenses or sublicenses of IP Rights in the ordinary course of business with Post or any of its Subsidiaries; and

(o) transactions pursuant to the Formation Documents (as in effect on the date of this Agreement, or as amended, modified or restated from time to time in a manner not materially adverse to the interests of the Lenders).

Section 7.09 *Restrictive Agreements*. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability (i) of any Restricted Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor, (ii) of any Restricted Subsidiary to Guarantee the Indebtedness of the Borrower hereunder or (iii) of the Borrower or any Restricted Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; *provided, however*, that clauses (i) and (iii) shall not prohibit any negative pledge or similar provision, or restriction on transfer of property, incurred or provided in favor of any holder of Indebtedness permitted under Section 7.03(e) and Section 7.15 solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness or transaction or any other property securing any other Indebtedness permitted under Section 7.03(e) or Section 7.15 to the extent permitted thereunder. Notwithstanding the foregoing, this Section 7.09 will not restrict or prohibit:

- (1) to the extent constituting a limitation described in Section 7.09(i), restrictions imposed pursuant to an agreement that has been entered into in connection with a transaction permitted pursuant to Section 7.05 with respect to the property that is subject to that transaction;
- (2) restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(b), (d) (to the extent secured under Section 7.01(x)), (e), (g), (j) or (t), in each case in respect of the limitation described in Section 7.09(iii) to the extent that such restrictions apply only to the property or assets securing to such Indebtedness;
- (3) provisions restricting subletting or assignment of Contractual Obligations;
- (4) to the extent constituting a limitation described in Section 7.09(i), restrictions contained in Indebtedness permitted under (x) Section 7.03(g) or (y) Sections 7.03(i), (s), (t) or (x), in the case of this clause (y) so long as such restrictions are no more restrictive, taken as a whole, to the Borrower and its Restricted Subsidiaries than the restrictions or covenants contained in this Agreement;
- (5) to the extent constituting a limitation described in Section 7.09(i), provisions with respect to the disposition or distribution of assets or property in joint venture agreements and other similar agreements entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business;
- (6) to the extent constituting the limitation described in Section 7.09(i), customary restrictions on a Receivables Subsidiary and Receivables Program Assets effected in connection with a Qualified Receivables Transaction;

- (7) to the extent constituting a limitation described in Section 7.09(i), restrictions on cash or other deposits or net worth imposed by customers on the Borrower and its Restricted Subsidiaries under contracts entered into in the ordinary course of business;
- (8) to the extent constituting a limitation described in Section 7.09(i), encumbrances or restrictions arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Borrower or any of its Restricted Subsidiaries in any manner material to the Borrower or any of its Restricted Subsidiaries; or
- (9) to the extent constituting a limitation described in Section 7.09(i), encumbrances or restrictions existing under, by reason of or with respect to customary provisions contained in leases or licenses of intellectual property and other agreements, in each case, entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business.

Section 7.10 *Use of Proceeds*. Request any Credit Extension, use, or allow any of its Restricted Subsidiaries to use, the proceeds of any Credit Extension, (a) in furtherance of an offer, payment, promise to pay or authorization of the payment or giving of money, or anything else of value to any Person in violation of Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of, or with, any Sanctioned Person or in any Sanctioned Country, or (c) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

Section 7.11 *Total Net Leverage Ratio*. Commencing with the first full fiscal quarter ending after the Closing Date, permit the Total Net Leverage Ratio at the end of any fiscal quarter to be greater than 6.00:1.00.

Section 7.12 *Amendments of Organization Documents*. Amend any of its Organization Documents in a manner materially adverse to the Lenders.

Section 7.13 *Fiscal Year*. Make any change in its Fiscal Year.

Section 7.14 *Prepayments of Indebtedness*.

Prepay, redeem, purchase, defease or otherwise satisfy more than ninety (90) days prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any subordinated, unsecured or junior secured Indebtedness, in each case with an outstanding principal amount in excess of the greater of (x) \$28,000,000 and (y) 15.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b) (such Indebtedness, the “**Restricted Indebtedness**”), except, in each case, for:

- (a) the refinancing thereof with the proceeds of any Permitted Refinancing permitted by Section 7.03,

(b) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary owed to the Borrower or any Restricted Subsidiary to the extent not prohibited by the subordination provisions applicable thereto,

(c) so long as no Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing or would be caused thereby, prepayments, redemptions, purchases or other payments made to satisfy Restricted Indebtedness (not in violation of any subordination terms in respect thereof) in an amount not to exceed the greater of \$38,000,000 and 20.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b),

(d) an amount not to exceed the Available Amount at the time of the making of such prepayment, redemption, repurchase or other payment; provided that the portion of the Available Amount attributed to clause (a)(1) of the definition thereof shall not be available for any such prepayments, redemptions, purchases or other payments made to satisfy Restricted Indebtedness made pursuant to this clause (d) if an Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing or would be caused thereby,

(e) so long as no Event of Default has occurred and is continuing or would be caused thereby, prepayments, redemptions, purchases or other payments made to satisfy Restricted Indebtedness (not in violation of any subordination terms in respect thereof) shall be permitted so long as the pro forma Total Net Leverage Ratio would be less than 2.70:1.00,

(f) regularly scheduled interest, fees and indemnification obligations due under any document, agreement or instrument evidencing any Restricted Indebtedness or entered into in connection with any Restricted Indebtedness, other non-principal payments thereunder, any mandatory prepayments of principal, interest and fees thereunder, scheduled payments thereon necessary to avoid the Restricted Indebtedness from constituting “applicable high yield discount obligations” within the meaning of Section 163(i)(1) of the Code and principal on the scheduled maturity date of any Restricted Indebtedness (or within ninety (90) days thereof), in each case to the extent not expressly prohibited by the subordination provisions applicable thereto, if any, and

(g) prepayments, redemptions or purchases of, or other payments made to refinance or repay, the Indebtedness outstanding under the Bridge Facility Agreement.

For the avoidance of doubt, nothing contained herein prohibits the making of the Bridge Loan Repayment.

Section 7.15 Sale-Leaseback Transactions. Enter into any sale-leaseback transaction in which any Loan Party is the seller or the lessee unless the disposition of assets is permitted under Section 7.05 and the incurrence of indebtedness is permitted by Section 7.03; provided, that the amount of all such sales shall not exceed the greater of (x) \$75,000,000 and (y) 40.00% of Consolidated EBITDA of the Borrower and its Restricted Subsidiaries based on the most recent financial statements delivered under Section 6.01(a) or (b).

Section 7.16 *Amendments of Indebtedness*. Amend, modify, or change in any manner any term or condition of any Restricted Indebtedness, in each case, in a manner materially adverse to the Lenders or that would effect a prepayment, redemption or repurchase or a Restricted Payment not otherwise permitted under Section 7.06 or Section 7.14, as applicable.

ARTICLE 8. EVENTS OF DEFAULT AND REMEDIES

Section 8.01 *Events of Default*. Each of the following shall constitute an Event of Default (each, an “**Event of Default**”):

(a) *Non-Payment*. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) *Specific Covenants*. (i) The Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a), 6.04 (with respect to the Borrower’s existence) or 6.10, or Article 7; or

(c) *Other Defaults*. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the Administrative Agent provides written notice to the Borrower of such failure; or

(d) *Representations and Warranties*. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect, in any material respect, when made or deemed made; or

(e) *Cross-Default*. (i) The Borrower or any Restricted Subsidiary (other than an Escrow Subsidiary) (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee of Indebtedness (other than Indebtedness under the Loan Documents and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee of Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, in each case after any applicable grace, cure or notice period, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the

beneficiary or beneficiaries of such Guarantee of Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee of Indebtedness to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined, or as such comparable term may be used and defined, in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Restricted Subsidiary is the Defaulting Party (as defined, or as such comparable term may be used and defined, in such Swap Contract) or (B) any Termination Event (as defined, or as such comparable term may be used and defined, in such Swap Contract) under such Swap Contract as to which the Borrower or any Restricted Subsidiary is an Affected Party (as defined, or as such comparable term may be used and defined, in such Swap Contract) and, in either event, the Swap Termination Value owed by the Borrower or such Restricted Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any of its Restricted Subsidiaries (other than an Immaterial Subsidiary or an Escrow Subsidiary) institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts; Attachment.* (i) The Borrower or any Restricted Subsidiary (other than an Immaterial Subsidiary or an Escrow Subsidiary) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) *Judgments.* There is entered against the Borrower or any Restricted Subsidiary (other than an Escrow Subsidiary) (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) *ERISA*. (i) An ERISA Event occurs that alone or together with any other ERISA Event that has occurred could reasonably be expected to result in a Material Adverse Effect, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount that could reasonably be expected to result in a Material Adverse Effect; or

(j) *Invalidity of Loan Documents*. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder including the release or termination thereof by the Administrative Agent or the Required Lenders or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) *Change of Control*. There occurs any Change of Control; or

(l) *Collateral Documents*. Any Collateral Document after delivery thereof pursuant to Article 4 or Section 6.11 shall for any reason (other than pursuant to the terms hereof) cease to create a valid and perfected first priority Lien (subject to Permitted Prior Liens) on the Collateral purported to be covered thereby.

Section 8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders (or, in the case of Section 8.02(a) (insofar as it relates to the obligations of the Revolving Credit Lenders to make Revolving Credit Loans and of the L/C Issuers to make L/C Credit Extensions), in each case, the Required Revolving Credit Lenders), take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to 105% of the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents or at law or in equity;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower or any Guarantor under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Section 8.03 *Application of Funds*. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16 and of any Pari Passu Intercreditor Agreement then in effect, be applied by the Administrative Agent in the order specified in Section 6.5 of the Collateral Agreement.

ARTICLE 9. AGENCY

Section 9.01 *Appointment and Authority*.

(a) Each of the Lenders and each L/C Issuer hereby irrevocably appoints Credit Suisse AG, Cayman Islands Branch to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and the Borrower shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Cash Management Bank and potential Hedge Bank) and the L/C Issuers hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder (at the direction of the Administrative Agent), shall be entitled to the benefits of all

provisions of this Article 9 and Article 10 (including Section 10.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents, as if set forth in full herein with respect thereto; *provided* that to the extent an L/C Issuer is entitled to indemnification under this Section 9.01 solely in connection with its role as an L/C Issuer, only the Revolving Credit Lenders shall be required to indemnify such L/C Issuer in accordance with this Section 9.01. The provisions of this Article 9 shall survive the payment in full of the Obligations, the termination of the Commitments and the termination of this Agreement.

Section 9.02 *Rights as a Lender.* The Administrative Agent shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent hereunder, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03 *Exculpatory Provisions.* The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except (in the case of the Administrative Agent) discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.02 and 10.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until it shall have received written notice from a Lender, an L/C Issuer or the Borrower referring to this Agreement, describing such Default and stating that such notice is a “notice of default.”

Neither the Administrative Agent nor any of its Related Parties shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than, in the case of the Administrative Agent, to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04 *Reliance*. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 *Delegation of Duties*. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

Section 9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuers appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by the entity serving as Administrative Agent pursuant to this Section shall also constitute its resignation as an L/C Issuer (if applicable). Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor may agree to succeed to and become vested with all of the rights, powers, privileges and duties of a retiring L/C Issuer, if applicable. In connection with any such agreement to succeed to the retiring L/C Issuer, the successor L/C Issuer, if applicable, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to the retiring L/C Issuer to effectively assume the obligations of such retiring L/C Issuer with respect to such Letters of Credit.

Notwithstanding the foregoing, the failure of any successor to agree to succeed to a retiring L/C Issuer shall not affect the resignation of such retiring L/C Issuer. The retiring L/C Issuer shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)), but shall have no obligation to issue any additional Letters of Credit or to amend, extend or otherwise modify any existing Letters of Credit (except as required pursuant to the terms of any such existing Letters of Credit).

Section 9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Managers or the Administrative Agent shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

Section 9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relating to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or L/C Issuer in any such proceeding.

Section 9.10 *Collateral and Guaranty Matters.* Each Lender (including in its capacities as a potential Cash Management Bank and as a potential Hedge Bank) and L/C Issuer irrevocably authorizes the Administrative Agent, at its option and in its discretion, after the Closing Date:

(a) to release any Lien to the extent securing the Obligations on any property granted to or held by the Administrative Agent under any Loan Document (i), upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations as to which no claim has been asserted and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements), the expiration or termination of all Letters of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the Administrative Agent and the applicable L/C Issuer shall have been made) and the termination and payment in full of all obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements in respect of which the Administrative Agent has received notice pursuant to Section 9.11 (other than any such agreements as to which other arrangements reasonably satisfactory to the applicable Cash Management Bank or Hedge Bank have been made), (ii) that is Disposed of in a transaction permitted hereunder the result of which is that, following the consummation thereof, no Loan Party has rights in the property being Disposed of or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01;

(b) to release any Guarantor from its Guarantee of the Obligations under the Collateral Agreement (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations as to which no claim has been asserted and (B) obligations and liabilities under Secured Cash Management Agreement and Secured Hedge Agreements), the expiration or termination of all Letters of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the Administrative Agent and the applicable L/C Issuer shall have been made) and the termination and payment in full of all obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements in respect of which the Administrative Agent has received notice pursuant to Section 9.11 (other than any such agreements as to which other arrangements reasonably satisfactory to the applicable Cash Management Bank or Hedge Bank have been made), or (ii) if approved, authorized or ratified in writing in accordance with Section 10.01;

(c) to release any Guarantor from its Guarantee of the Obligations and all Liens granted by any such Guarantor, and all pledges of Equity Interests in any such Guarantor under the Collateral Agreement if such Person ceases to be a Restricted Subsidiary (including by being designated an Unrestricted Subsidiary in accordance with Section 6.17 hereof, or by way of liquidation, merger, consolidation, amalgamation or dissolution or Disposition thereof as permitted by this Agreement), or becomes an Immaterial Subsidiary or an Excluded Subsidiary; *provided* that, if such Guarantor becomes an Excluded Subsidiary by virtue of being a first tier Affected Foreign Subsidiary, then the release of any pledge of Equity Interests therein shall be limited to 35% of the voting Equity Interests thereof and if such Affected Foreign Subsidiary is a direct or indirect Subsidiary of an Affected Foreign Subsidiary, then the release shall be 100% of any pledge of Equity Interests of such Subsidiary; provided, however that if such Guarantor becomes an Excluded Subsidiary solely in reliance on clause (g) of the definition of “Excluded Subsidiary,” then the release of such Guarantor from its Obligations under the Loan Documents shall only be permitted if at the time such Guarantor becomes an Excluded Subsidiary of such type, after giving pro forma effect to such release and consummation of the transaction that causes such Person to be an Excluded Subsidiary of such type, the Borrower is deemed to have made a new Investment in such Person on the date of such release in an amount equal to the portion of the fair market value of the net assets of such Person attributable to the Borrower’s or any Restricted Subsidiary’s Equity Interest therein and such Investment is permitted under Section 7.02 at such time;

(d) to execute any intercreditor agreements and/or subordination agreements with any holder of any Indebtedness or Liens permitted by this Agreement to the extent such intercreditor agreement and/or subordination agreement is required by the terms hereof; and

(e) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document, to the extent securing the Obligations, to the holder of any Lien on such property that is permitted by Section 7.01(i).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent’s authority to release or subordinate its interest in particular types or items of Collateral, or to release any Guarantor from its Guarantee of the Obligations under the Collateral Agreement pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower’s expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its Guarantee of the Obligations under the Collateral Agreement, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Notwithstanding anything to the contrary in this Agreement, upon a Subsidiary being designated an Unrestricted Subsidiary in accordance with Section 6.17 of this Agreement or otherwise ceasing to be a Restricted Subsidiary (including by way of liquidation, merger, consolidation or amalgamation or dissolution) in a transaction permitted by this Agreement, such Subsidiary shall be automatically released and relieved of any obligations under this Agreement, the Collateral Agreement and all other Loan Documents, all Liens granted by such Subsidiary in its assets to the Administrative Agent shall be automatically released, all pledges to the Administrative Agent of Equity Interests in any such Subsidiary shall be automatically released, and the Administrative Agent is authorized to, and shall promptly, deliver to the Borrower any acknowledgement confirming such releases and all necessary releases and terminations, in each case as the Borrower may reasonably request to evidence such release and at Borrower's expense. To the extent any Loan Document conflicts or is inconsistent with the terms of this Section, this Section shall govern and control in all respects.

Section 9.11 *Additional Secured Parties*. No Cash Management Bank or Hedge Bank that obtains the benefits of the Collateral Agreement or any Collateral by virtue of the provisions hereof or of the Collateral Agreement or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article 9 to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

Section 9.12 *Certain ERISA Matters*.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent or any Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

ARTICLE 10. MISCELLANEOUS

Section 10.01 *Amendments, Etc.* Except as set forth below in this Section 10.01, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent (or signed by the Administrative Agent on behalf of and with the written consent of the Required Lenders), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver, consent or other modification shall:

(a) waive any condition set forth in Section 4.01 without the written consent of each Lender adversely affected thereby;

(b) without limiting the generality of clause (a) above, waive any condition set forth in Section 4.02 as to any Credit Extension under the Revolving Credit Facility without the written consent of the Required Revolving Credit Lenders;

(c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 2.06 or Section 8.02) without the written consent of such Lender;

(d) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments pursuant to Section 2.05(b)) of principal, interest, fees or other amounts due to the Lenders (or any of them) or any scheduled or mandatory reduction of any Facility hereunder or under any other Loan Document without the written consent of each Appropriate Lender directly affected thereby;

(e) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of the Required Lenders shall be necessary to amend (i) the definition of “**Default Rate**” or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate and (ii) any financial ratio (including any defined term used therein) or any definition relating to any (x) financial calculation or (y) currency exchange rate calculation affecting compliance with Sections 7.01, 7.02 and 7.03 with respect to the amount of Liens, Indebtedness or Investment in currencies other than U.S. Dollars hereunder even if, in the case of clause (x) and (y), the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(f) change (i) Section 8.03 of this Agreement or Section 6.5 of the Collateral Agreement in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) the definition of “Applicable Percentage,” the definition of “Applicable Revolving Credit Percentage,” the order of application or pro rata nature of application of any reduction in the Commitments or any prepayment of Loans within or among the Facilities from the application thereof set forth in the applicable provisions of Sections 2.05(a), 2.05(b) or 2.06(c), or other provisions in respect of the pro rata application of payments or offers hereunder under Section 2.12, 2.13, 2.14, 2.15, 2.16 or 10.06(b)(vii) in any manner that materially and adversely affects the Lenders under a Facility or Class without the written consent of the Lenders with respect to the relevant Facility or Class and adversely affected thereby;

(g) change (i) any provision of this Section 10.01 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 10.01(g)), without the written consent of each Lender; (ii) the definition of “Required Lenders”, “Required Facility Lenders”, “Required Revolving Credit Lenders” or “Required Term B Lenders” without

the written consent of each Lender under the applicable Facility or (iii) any other provision of this Agreement or the other Loan Documents in a manner that creates a materially disadvantaged Class or otherwise materially adversely affects a Class, without the written consent of the Required Lenders with respect to such Class determined in a manner consistent with the definition of “Required Facility Lenders” (as if such Class constituted a Facility for purposes of such definition);

(h) release all or substantially all of the value of the Guarantees of the Obligations in any transaction or series of transactions without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(i) release all or substantially all of the Collateral in any transaction or series of related transactions without the written consent of each Lender, except to the extent the release of any Collateral is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(j) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of the Required Facility Lenders with respect to the relevant Facility;

(k) amend the definition of “Alternative Currency” without the written consent of each Revolving Credit Lender and L/C Issuer; or

(l) amend clause (x) of Section 10.06(a) without the written consent of each Lender;

and, *provided, further*, that (i) no amendment, waiver, consent or modification shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document, in each case, relating to any Letter of Credit issued or to be issued by it; (ii) [reserved], (iii) no amendment, waiver, consent or modification shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document and (iv) any Fee Letter may be amended, and rights or privileges thereunder may be waived, in a writing executed only by the parties thereto.

Notwithstanding anything to the contrary contained herein, if, following the Closing Date, the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to this Agreement or any other Loan Document if the same is not objected to in writing by the Required Lenders within three Business Days following receipt of notice thereof. It is understood that posting such amendment electronically on IntraLinks/IntraAgency, SyndTrak or another relevant website with notice of such posting by the Administrative Agent to the Required Lenders shall be deemed adequate receipt of notice thereof.

(a) *Notices Generally.* Except as provided in Section 10.02(b), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(i) if to the Borrower, the Administrative Agent or any L/C Issuer party hereto on the Closing Date, to the address, facsimile number, or electronic mail address specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, or electronic mail address specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in Section 10.02(b) shall be effective as provided in such Section 10.02(b).

(b) *Electronic Communications.* Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to Article 2 if such Lender or L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *The Platform*. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) *Change of Address, Etc*. Each of the Borrower, the Administrative Agent and the L/C Issuers may change its address or facsimile for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address or facsimile for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the L/C Issuers. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain MNPI with respect to the Borrower or any of its Subsidiaries or their respective securities for purposes of United States Federal or state securities laws.

(e) *Reliance by Administrative Agent, L/C Issuers and Lenders*. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the L/C Issuers, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower except to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Person. All telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereby consents to such recording.

Section 10.03 *No Waiver; Cumulative Remedies; Enforcement.* No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuers and, in respect of the Collateral Documents, any other Secured Party; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) each of the L/C Issuers from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Secured Party from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c), and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 *Expenses; Indemnity; Damage Waiver.*

(a) *Costs and Expenses.* The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Arrangers and the Administrative Agent and their respective Affiliates (including but not limited to expenses associated with the syndication of the Facilities, due diligence efforts, the reasonable fees, charges and disbursements of counsel, limited to a single counsel and, in each relevant jurisdiction, a single local counsel and one additional local counsel in each applicable jurisdiction for any such person in the event of a conflict of interest, (including, without limitation, reasonable and actual travel expenses), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by any L/C Issuer in connection with the issuance, amendment, renewal or extension of

any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent (including the fees, charges and disbursements of any counsel for the Administrative Agent (limited to the fees, disbursements, and other charges of a single law firm and, in each relevant jurisdiction, a single local counsel, in each case, representing the Administrative Agent, and one additional local counsel in each applicable jurisdiction for any such person in the event of a conflict of interest)), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) *Indemnification.* Each Loan Party shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each L/C Issuer and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any external counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the Transactions and the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (except for any Taxes (which shall be governed by Section 3.01), other than any Taxes that represent losses, claims or damages arising from any non-Tax claim), (ii) any Loan or Letter of Credit or the use or intended use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on, through, under or from any property currently or formerly owned, leased or operated by the Borrower or any of its Restricted Subsidiaries, or any Environmental Claim or Environmental Liability related in any way to any of the Loan Parties or any of their respective Restricted Subsidiaries or (iv) any claim, litigation, investigation, inquiry or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a Lender, a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto (collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or (y) any proceedings between or among Indemnitees (other than any claims against an Indemnitee in its capacity as Administrative Agent, Lead Arranger, Co-Manager or similar role under any Facility).

(c) *Reimbursement by Lenders.* To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or such L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or such L/C Issuer in connection with such capacity; *provided* that in respect of the proviso in subclause (b) above, it is understood and agreed that any action taken by the Administrative Agent (and any sub-agent thereof) and/or any of its Related Parties in accordance with the directions of the Required Lenders or any other appropriate group of Lenders pursuant to Section 10.01 shall not be deemed to constitute gross negligence or willful misconduct for purposes of such proviso. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(e).

(d) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) *Payments.* All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) *Survival.* The agreements in this Section 10.04 shall survive the resignation of the Administrative Agent and any L/C Issuer, the replacement of the Administrative Agent, any Lender or any L/C Issuer, the termination of the Aggregate Commitments, the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement.

Section 10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended

to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and (b) each Lender and L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations, the termination of the Commitments and the termination of this Agreement.

Section 10.06 *Successors and Assigns*.

(a) *Successors and Assigns Generally*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (x) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and (y) no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Indemnitees and the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders*. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) *Minimum Amounts*.

(A) In the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans (including such Lender's participations in L/C Obligations) of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified

in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 (and whole multiples of \$1,000,000 in excess thereof), in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000 (and whole multiples of \$1,000,000 in excess thereof), in the case of any assignment in respect of the Term Loans, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) *Proportionate Amounts*. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) *Required Consents*. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof in the case of assignments of any Term Loans and ten (10) Business Days after having received notice thereof in the case of assignments of the Revolving Credit Facility;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the L/C Issuers (each such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of any Revolving Credit Facility.

(iv) *Assignment and Assumption*. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) *No Assignment to Certain Persons*. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, except as provided below in clause (vii) or (B) to a Defaulting Lender, a Disqualified Lender or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) *No Assignment to Natural Persons*. No such assignment shall be made to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) *Borrower Purchases*. Notwithstanding anything to the contrary contained in this Section 10.06 or any other provision of this Agreement, so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may repurchase outstanding Term Loans of any Facility on the following basis:

(A) the Borrower may conduct one or more auctions (each, an "**Auction**") to repurchase all or any portion of the applicable Term Loans of a given Class (such Term Loans, the "**Offer Loans**") of Term Lenders; *provided* that (1) the Borrower delivers to the Administrative Agent (for distribution to all Lenders holding Term Loans of such Class) a notice of the aggregate principal amount of the Offer Loans that will be subject to such Auction no later than 12:00 p.m. at least five Business Days (or such shorter period as may be agreed to by the Administrative Agent) in advance of a proposed consummation date of such Auction indicating (a) the date on which the Auction will conclude, (b) the maximum principal amount of the Offer Loans the Borrower is willing to purchase in the Auction and (c) the range of discounts to par at which the Borrower would be willing to repurchase the Offer Loans; (2) the minimum dollar amount of the Auction shall be no less than \$10,000,000 or whole multiples of \$1,000,000 in excess thereof; (3) the Borrower shall hold the Auction open for a minimum period of three Business Days; (4) a Lender who elects to participate in the Auction may choose to tender all or part of such Lender's Offer Loans; (5) the Auction shall be made to the Lenders holding the Offer Loans (and purchases of Offer Loans held by Lenders who elect to participate shall be made by the Borrower) on a pro rata basis in accordance with the respective principal amount then due and owing to the applicable Term Lenders; and (6) the Auction shall be conducted pursuant to such procedures as the Administrative Agent may establish which are consistent with this Section 10.06 and are reasonably acceptable to the Borrower, which procedures must be followed by a Lender in order to have its Offer Loans repurchased;

(B) with respect to all repurchases made pursuant to this Section 10.06, (1) the Borrower shall pay to the applicable selling Lender all accrued and unpaid interest, if any, on the repurchased Offer Loans to the date of repurchase of such Offer Loans, (2) such repurchases shall not be deemed to be optional prepayments pursuant to Section 2.05(a), (3) the amount of the Loans so repurchased shall be applied on a pro rata basis to reduce the scheduled remaining installments of principal on the Offer Loans, and (4) the purchase consideration for such Auction shall in no event be funded with the proceeds of Revolving Credit Loans; and

(C) following a repurchase pursuant to this Section 10.06, the Offer Loans so repurchased shall, without further action by any Person, be deemed cancelled for all purposes and no longer outstanding (and may not be resold) for all purposes of this Agreement and all the other Loan Documents, including, but not limited to (1) the making of, or the application of, any payments to the Lenders under this Agreement or any other Loan Document, (2) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Loan Document or (3) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Loan Document. In connection with any Term Loans repurchased and cancelled pursuant to this Section 10.06, the Administrative Agent is authorized to make appropriate entries in the Register to reflect any such cancellation.

(viii) *Certain Additional Payments*. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording in the Register thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this

Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) *Register*. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for Tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Upon its receipt of a duly completed and executed Assignment and Assumption, the Administrative Agent shall record the information contained therein in the Register. The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register is intended to cause each Loan and other obligation hereunder to be in registered form within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version) and within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code. The Register shall be available for inspection by the Borrower and any Lender (with respect to such Lender's entry), at any reasonable time and from time to time upon reasonable prior notice.

(d) *Participations*. Any Lender may at any time, without the consent of, or notice to, the Borrower, any L/C Issuer or the Administrative Agent, sell participations to any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person), a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or Loans (including such Lender's participations in L/C Obligations) owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement .

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification requiring the consent of each Lender affected thereby and that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; *provided, further* that such agreement or instrument shall provide that the Participant understands that the value of the loan asset (including Participant's pro rata share thereof) may increase or decrease based on fluctuations in currency exchange rates and agrees that any losses (gains) experienced as a result of changes in currency exchange rates shall be shared by such Participant in accordance with the Participant's pro rata share. To the extent permitted by law, each Participant shall also be entitled to the benefits of Section 10.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower (such agency being solely for Tax purposes), maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under United States Treasury Regulations Section 5f.103-1(c) and Proposed Treasury Regulations Section 1.163-5(b) (or, in each case, any amended or successor version) and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent or except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant shall be entitled to the benefits of Section 3.01 if such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender (*provided* that all forms required under Section 3.01(e) shall instead be delivered to the applicable Lender).

(f) *Certain Pledges.* Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) *Resignation as L/C Issuer after Assignment.* Notwithstanding anything to the contrary contained herein, if at any time a Lender serving as an L/C Issuer assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to subsection (b) above, such Lender may, upon 30 days' notice to the Borrower and the other Lenders, resign as an L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the Revolving Credit Lenders a successor L/C Issuer hereunder if such Revolving Credit Lender is willing to act in such capacity; *provided, however*, that no failure by the Borrower to appoint any such successor shall affect the resignation of the retiring entity as L/C Issuer. If any entity serving as L/C Issuer resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Upon the appointment of a successor L/C Issuer and the acceptance of such appointment by such successor, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to the retiring L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

(h) Disqualified Lenders.

(i) No assignment or participation shall be made to any Person that was a Disqualified Lender as of the date (the "**Trade Date**") on which the assigning or transferring Lender entered into a binding agreement to sell and assign, or grant a participation in, all or a portion of its rights and obligations under this Agreement, as applicable, to such Person. For the avoidance of doubt, no assignment or participation shall be retroactively invalidated pursuant to this Section 10.06(h) if the Trade Date therefor occurred prior to the assignee's or participant's becoming a Disqualified Lender.

(ii) The Administrative Agent and each assignor of a Loan or Commitment or seller of a participation hereunder shall be entitled to rely conclusively on a representation of the assignee Lender or Participant in the relevant Assignment and Assumption or participation agreement, as applicable, that such assignee or purchaser is not a Disqualified Lender. The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to provide the list of Disqualified Lenders to each Lender upon request. Subject to Section 10.06(h)(iii), any assignment by a Lender to a Disqualified Lender in violation of this Section 10.06(h) shall be treated for purposes of this Agreement as a sale by such Lender of a participation of such rights and obligations in accordance with Section 10.06(d), *provided* that such treatment shall not relieve any assigning Lender from any liabilities arising as a consequence of its breach of this Agreement.

(iii) If any assignment or participation is made to any Disqualified Lender without the Borrower's prior written consent in violation of clause (i) above, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Lender and the Administrative Agent, (A) terminate any Revolving Credit Commitment of such Disqualified Lender and repay all obligations of the Borrower owing to such Disqualified Lender in connection with such Revolving Credit Commitment or in accordance with and subject to the provisions of Section 10.13, require such Disqualified Lender to assign and delegate all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 or Section 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee as if such Disqualified Lender were required to do so pursuant to Section 10.13, (B) in the case of Term Loans held by a Disqualified Lender, purchase or prepay such Term Loans by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such Term Loans and or (C) in the case of Term Loans, require such Disqualified Lender to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 10.06) all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees that agrees to such assignment in writing at a price equal to the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such interests, rights and obligations.

(iv) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Lenders (1) will not have the right to (x) receive information, reports or other materials provided to the Administrative Agent or the Lenders by the Borrower or any of its Subsidiaries, the Administrative Agent or any other Lender, (y) attend or participate (including by telephone) in meetings attended by any of the Lenders and/or the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (2) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Lender will be deemed to have consented to such matter in the same proportion as the Lenders that are not Disqualified Lenders consented to such matter; *provided* however that any Disqualified Lender's consent shall be required for any amendment, waiver or other modification described in clause (c) of Section 10.01 with respect to any increase to the Commitments of such Disqualified Lender, and (y) for purposes of voting on any plan of reorganization pursuant to Section 1126 of the Bankruptcy Code of the United States or any similar plan or proposal under any other Debtor Relief Law with respect to Borrower or any of its Subsidiaries, each Disqualified Lender hereby agrees (1) not to vote on such plan, (2) if such Disqualified Lender does vote on such plan notwithstanding the restriction in the immediately foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code of the United States (or any similar provision in any other similar federal, state or foreign law affecting creditor's rights, including any Debtor Relief Law), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the Bankruptcy Code of the United States (or any similar provision in any other similar federal, state or foreign law affecting creditor's rights including any Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(v) Notwithstanding anything to the contrary in this Agreement, the Loan Parties and the Lenders acknowledge and agree that in no event shall the Administrative Agent or any of its Affiliates or Related Parties be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

Section 10.07 *Treatment of Certain Information; Confidentiality*. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over it or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners), in which case each of the Administrative Agent, the Lenders and the L/C Issuers agrees to inform the Borrower promptly thereof prior to such disclosure to the extent not prohibited by law, rule or regulation, as applicable (except with respect to any audit or examination conducted by bank accountants or any governmental or regulatory authority exercising examination or regulatory authority over the Administrative Agent, such Lender or such L/C Issuer) and to use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment, (c) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process or to the extent required by applicable laws or regulations or by any subpoena or similar legal process, in which case each of the Administrative Agent, the Lenders and the L/C Issuers agrees to inform the Borrower promptly thereof prior to such disclosure to the extent not prohibited by law, rule or regulation, as applicable (except with respect to any audit or examination conducted by bank accountants or any governmental or regulatory authority exercising examination or regulatory authority over the Administrative Agent, such Lender or such L/C Issuer) and to use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) on a confidential basis to (i) any rating agency in connection with rating the

Borrower or its Restricted Subsidiaries or any Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to any Facility or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, (y) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or (z) is independently developed by the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates without reliance on any confidential Information of the Borrower and its Subsidiaries. In addition, each of the Administrative Agent, the Lenders and the L/C Issuers may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent, the Lenders and the L/C Issuers in connection with the administration of this Agreement, the other Loan Documents and the Credit Extensions.

Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include MNPI concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of MNPI and (c) it will handle such MNPI in accordance with applicable Law, including United States Federal and state securities Laws.

Section 10.08 *Right of Setoff*. If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of [Section 2.16](#) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to all other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have under applicable Law or otherwise. Each Lender and L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09 *Interest Rate Limitation*. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the unpaid principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or any Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude optional prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.10 *Counterparts; Integration; Effectiveness*. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the Fee Letters and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.11 *Survival of Representations and Warranties*. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent, each Lender and each L/C Issuer, regardless of any investigation made by the Administrative Agent, any Lender or any L/C Issuer or on their behalf and notwithstanding that the Administrative Agent, any Lender or any L/C Issuer may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation (other than contingent indemnification obligations as to which no claim has been asserted and obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements) hereunder shall remain unpaid or unsatisfied, any Commitment remains in effect or any Letter of Credit shall remain outstanding.

Section 10.12 *Severability*. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, then, to the fullest extent permitted by law, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with

valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent or any L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender shall have not consented to any proposed amendment, modification, termination, waiver or consent requiring the consent of all Lenders or all affected Lenders as contemplated by Section 10.01 and the consent of the Required Lenders, the Required Term B Lenders, the Required Revolving Credit Lenders or the Required Facility Lenders, as applicable, has been obtained, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 and Section 3.04) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal, L/C Advances, and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of any such assignment resulting from a Lender becoming a non-consenting Lender, the applicable assignee shall have consented to the applicable amendment, modification, termination, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each Lender and L/C Issuer hereby agrees and acknowledges that, with regard to any Assignment and Assumption necessary to effectuate

any assignment of such Lender's or L/C Issuer's interests hereunder in the circumstances contemplated by this Section 10.13, consent to such Assignment and Assumption shall have been deemed to have been given if such Lender or L/C Issuer has not responded within one Business Day of a request for such consent.

Section 10.14 *Governing Law; Jurisdiction; Etc.*

(a) **Governing Law.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE IN ANY WAY HERETO OR THERETO OR THE NEGOTIATION, EXECUTION OR PERFORMANCE HEREOF OR THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, UNLESS OTHERWISE EXPRESSLY SET FORTH THEREIN, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) **Submission to Jurisdiction.** THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **Waiver of Venue.** THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.15 *Waiver of Jury Trial*. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.16 *California Judicial Reference*. If any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Loan Document, (a) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, *provided* that at the option of any party to such proceeding, any such issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 10.04, the Borrower shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

Section 10.17 *No Advisory or Fiduciary Responsibility*. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and each of the Arrangers and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person

and (B) neither the Administrative Agent nor any of the Arrangers or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and each of the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any of the Arrangers or the Lenders has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and each of the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.18 *Electronic Execution of Assignments and Certain Other Documents*. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.19 *USA PATRIOT Act*. Each Lender and each L/C Issuer that is subject to the Act and the Administrative Agent (for itself and not on behalf of any Lender or L/C Issuer) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Act**”) and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Borrower and each Guarantor, which information includes the name, tax identification number and address of the Borrower and each Guarantor and other information that will allow such Lender or L/C Issuer or the Administrative Agent, as applicable, to identify the Borrower and each Guarantor in accordance with the Act and the Beneficial Ownership Regulation. The Borrower shall, and shall cause each Guarantor to, promptly following a request by the Administrative Agent or any Lender or L/C Issuer, provide all documentation and other information that the Administrative Agent or L/C Issuer or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

Section 10.20 *Judgment Currency*. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “**Agreement Currency**”), be discharged only to

the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. The provisions of this Section 10.20 shall survive the payment in full of the Obligations, the termination of the Commitments and the termination of this Agreement.

Section 10.21 *Pari Passu Intercreditor Agreement*. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (i) the Liens granted to the Administrative Agent in favor of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the Pari Passu Intercreditor Agreement (if in effect), (ii) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of the Pari Passu Intercreditor Agreement, on the other hand, the terms and provisions of the Pari Passu Intercreditor Agreement shall control and (iii) each Lender and L/C Issuer (A) authorizes the Administrative Agent to execute the Pari Passu Intercreditor Agreement on behalf of such Lender and L/C Issuer, and (B) agrees to be bound by the terms of the Pari Passu Intercreditor Agreement and agrees that any action taken by the Administrative Agent under the Pari Passu Intercreditor Agreement shall be binding upon such Lender and L/C Issuer.

Section 10.22 *Acknowledgement and Consent to Bail-In of EEA Financial Institutions*.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

Section 10.23 *Acknowledgement Regarding Any Supported QFCs*. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**,” and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support; and

(b) As used in this Section 10.23, the following terms have the following meanings:

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

“**Covered Entity**” means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8) (D).

[Remainder of page intentionally left blank]

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

BELLRING BRANDS, LLC

By: /s/ Paul A. Rode

Name: Paul A. Rode
Title: Chief Financial Officer

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Administrative Agent, an L/C Issuer and a Lender

By: /s/ Doreen Barr

Name: Doreen Barr

Title: Authorized Signatory

By: /s/ Komal Shah

Name: Komal Shah

Title: Authorized Signatory

BANK OF AMERICA, N.A., as an L/C Issuer and a
Lender

By: /s/ David H. Strickert

Name: David H. Strickert

Title: Managing Director

BARCLAYS BANK PLC, as a Lender

By: /s/ Christopher M. Aitkin

Name: Christopher M. Aitkin

Title: Vice President

CITIBANK, N.A., as a Lender

By: /s/ Michael Moore

Name: Michael Moore

Title: Director

By: /s/ Thomas M. Menning

Name: Thomas M. Menning

Title: Authorized Signatory

By: /s/ Brendon Korb

Name: Brendon Korb

Title: Vice President

MORGAN STANLEY SENIOR FUNDING, INC., as a
Lender

By: /s/ Ethan Plater

Name: Ethan Plater

Title: Authorized Signatory

By: /s/ Joan Murphy

Name: Joan Murphy

Title: Managing Director

**COÖPERATIEVE RABOBANK U.A., NEW YORK
BRANCH, as a Lender**

By: /s/ Bradley A. Pierce

Name: Bradley A. Pierce

Title: Executive Director

By: /s/ Shane Koonce

Name: Shane Koonce

Title: Executive Director

**NOMURA CORPORATE FUNDING AMERICAS,
LLC, as a Lender**

By: /s/ Garrett Carpenter

Name: Garrett Carpenter

Title: Managing Director

SUNTRUST BANK, as a Lender

By: /s/ Tesha Winslow

Name: Tesha Winslow

Title: Director

By: /s/ Darlene Arias

Name: Darlene Arias

Title: Director

By: /s/ Kenneth Chin

Name: Kenneth Chin

Title: Director

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Mark Holm

Name: Mark Holm

Title: Managing Director



Post Holdings and BellRing Brands Announce Closing of BellRing’s Initial Public Offering and Full Exercise of Underwriters’ Option to Purchase Additional Shares

St. Louis – October 21, 2019 - Post Holdings, Inc. (NYSE:POST) (“Post”) and BellRing Brands, Inc. (NYSE:BRBR) (“BellRing”) today announced the closing of BellRing’s previously announced initial public offering of 39,428,571 shares of BellRing’s Class A common stock at a price to the public of \$14.00 per share, including the exercise in full by the underwriters of their option to purchase 5,142,857 additional shares. Upon completion of the offering, Post owns approximately 71% of BellRing. BellRing’s Class A common stock began trading on October 17, 2019 on the New York Stock Exchange under the symbol “BRBR”.

Morgan Stanley & Co. LLC, Citigroup, J.P. Morgan Securities LLC and Goldman Sachs & Co. LLC acted as the lead bookrunning managers for the offering. BofA Merrill Lynch, Barclays Capital Inc., BMO Capital Markets Corp., Credit Suisse Securities (USA) LLC, Evercore Group L.L.C., Stifel, Nicolaus & Company, Incorporated, SunTrust Robinson Humphrey, Inc. and Wells Fargo Securities, LLC acted as bookrunning managers. HSBC Securities (USA) Inc., Nomura Securities International, Inc., PNC Capital Markets LLC, Rabo Securities USA, Inc. and UBS Securities LLC acted as co-managers for the offering.

This offering was made only by means of a prospectus. A copy of the final prospectus may be obtained from Morgan Stanley & Co. LLC, Attention: Prospectus Department, 180 Varick Street, Second Floor, New York, New York 10014; Citigroup Global Markets Inc., c/o Broadridge Financial Solutions, 1155 Long Island Ave., Edgewood, NY 11717, or by telephone at (800) 831-9146; J.P. Morgan Securities LLC, c/o Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717, or by telephone at (866) 803-9204, or by email at prospectus-req_fi@jpmchase.com; or Goldman Sachs & Co. LLC, Attention: Prospectus Department, 200 West Street, New York, NY 10282, or by telephone at (866) 471-2526, or by email at prospectus-ny@ny.email.gs.com.

A registration statement relating to these securities has been filed with, and declared effective by, the Securities and Exchange Commission. This press release does not constitute an offer to sell or the solicitation of an offer to buy any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any jurisdiction.

About Post Holdings, Inc.

Post Holdings, Inc., headquartered in St. Louis, Missouri, is a consumer packaged goods holding company operating in the center-of-the-store, refrigerated, foodservice, food ingredient and convenient nutrition food categories. Through its Post Consumer Brands business, Post is a leader in the North American ready-to-eat cereal category offering a broad portfolio including recognized brands such as Honey Bunches of Oats®, Pebbles™, Great Grains® and Malt-O-Meal® bag cereal as well as private label products. Post also is a leader in the United Kingdom ready-to-eat cereal category with the iconic Weetabix® brand. As a leader in refrigerated foods, Post delivers innovative, value-added egg and refrigerated potato products to the foodservice channel and the retail refrigerated side dish category, offering side dishes and egg, sausage and cheese products through the Bob Evans®, Simply Potatoes®, All Whites®, Better’n Eggs® and Crystal Farms® brands. Post’s majority owned BellRing Brands business is a holding company operating in the global convenient nutrition category through its primary brands of Premier Protein®, PowerBar® and Dymatize®. Post participates in the private brand food category through its investment with Thomas H. Lee Partners in 8th Avenue Food & Provisions, a leading, private brand centric, consumer products holding company.

About BellRing Brands, Inc.

BellRing Brands, Inc. is a holding company operating in the global convenient nutrition category. Its primary brands, Premier Protein®, Dymatize® and PowerBar®, comprise all major product forms, including ready-to-drink protein shakes, powders and nutrition bars, and are distributed across channels including club, food, drug, mass, eCommerce, convenience and specialty.

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