

Agent shall, and shall be authorized to, take any actions deemed appropriate in order to effect the foregoing.

9.19 Dividends. Parent will not, and will not permit any of its Restricted Subsidiaries to, authorize, declare or pay any Dividends with respect to Parent or any of its Restricted Subsidiaries, except that:

(iii) any Restricted Subsidiary of Parent may authorize, declare and pay Dividends or return capital or make distributions and other similar payments with regard to its Equity Interests to Parent or any of its Restricted Subsidiaries which directly or indirectly own equity therein;

(iv) any non-Wholly-Owned Subsidiary of Parent may authorize, declare and pay Dividends to its shareholders generally so long as Parent or its Restricted Subsidiary which owns the Equity Interests in the Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holding of the Equity Interests in the Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of Equity Interests of such Subsidiary);

(v) so long as no Event of Default exists at the time of the applicable Dividend, redemption or repurchase or would exist immediately after giving effect thereto, Parent may authorize, declare and pay cash Dividends or other distributions (or pay a Dividend to any Parent Company to enable it or another Parent Company) to redeem or repurchase, contemporaneously with such Dividend, Equity Interests of Parent or such Parent Company from current or former management, employees, officers, directors and consultants (and their respective estates, heirs, beneficiaries, spouses, former spouses, domestic partners and former domestic partners) of Parent and its Restricted Subsidiaries; provided that (A) the aggregate amount of Dividends made by Parent pursuant to this clause (iii) shall not (net of any cash proceeds received by Parent (but in no event from any Initial Public Offering) from issuances of its Equity Interests in connection with such redemption or repurchase), in either case, exceed either (x) during any fiscal year of Parent, \$10,000,000 (provided that subject to the immediately succeeding clause (y), the amount of cash Dividends permitted to be, but not, paid in any fiscal year pursuant to this clause (iii) shall increase the amount of cash Dividends permitted to be paid in any succeeding fiscal year pursuant to this clause (iii)) or (y) for all periods after the Closing Date (taken as a single period), \$30,000,000; (B) such amount in any calendar year may be increased by an amount not to exceed: (I) the cash proceeds of key man life insurance policies received by Parent or any of its Restricted Subsidiaries after the Closing Date; plus (II) the net proceeds from the sale of Qualified Equity Interests in Parent, in each case to members of management, employees, officers, directors or consultants of any Parent Company or any of its Subsidiaries that occurs after the Closing Date, where the Net Cash Proceeds of such sale are received by or contributed to Parent; less (III) the amount of any Dividends previously made with the cash proceeds described in the preceding clause (I); and (C) cancellation of Indebtedness owing to Parent or any of its Restricted Subsidiaries from members of management, officers, directors, employees or consultants of Parent or any of its Subsidiaries in connection with a repurchase of Equity Interests of Parent or any Parent Company will not be deemed to constitute a Dividend for purposes of this Agreement;

(vi) Parent may authorize, declare and pay cash Dividends or other distributions to any Parent Company so long as the proceeds thereof are promptly used by such Parent Company (or subsequently paid to any other Parent Company) to pay expenses incurred by any Parent Company in connection with offerings, registrations, or exchange listings of equity or debt securities and

maintenance of same (A) where the net proceeds of such offering are to be received by or contributed to Parent, (B) in a prorated amount of such expenses in proportion to the amount of such net proceeds intended to be so received or contributed or loaned, or (C) otherwise on an interim basis prior to completion of such offering so long as such Parent Company shall cause the amount of such expenses to be repaid to Parent or the relevant Restricted Subsidiary out of the proceeds of such offering promptly if such offering is completed;

(vii) Parent may authorize, declare and pay cash Dividends or other distributions to any Parent Company so long as the proceeds thereof are promptly used by such Parent Company (or subsequently paid to any

other Parent Company) to pay reasonable and documented costs (including all reasonable and documented professional fees and expenses) incurred by any Parent Company in connection with reporting obligations under or otherwise incurred in connection with compliance with applicable laws, applicable rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, including in respect of any reports filed with respect to the Securities Act, the Securities Exchange Act or the respective rules and regulations promulgated thereunder;

(viii) Parent may authorize, declare and pay cash Dividends or other distributions to any Parent Company or the Equity Interest holders thereof in amounts required for any Parent Company or the Equity Interest holders thereof to pay, in each case without duplication:

(a) franchise Taxes (and other fees and expenses) required to maintain their corporate existence to the extent such Taxes, fees and expenses are reasonably attributable to the operations of Parent and its Restricted Subsidiaries;

(b) Taxes of Parent, any Subsidiary or any member of a consolidated, combined or similar income tax group (a “Tax Group”) of which any Parent Company is the common parent, and non-U.S. and U.S. federal, state and local income Taxes (including minimum Taxes) (or franchise and similar Taxes imposed in lieu of such minimum Taxes), in each case that are attributable to the taxable income of Parent and its Subsidiaries; provided that for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that Parent and its Subsidiaries would have been required to pay as a stand-alone Tax Group; provided further that the permitted payment pursuant to this clause (b) with respect to the Taxes of any Unrestricted Subsidiary for any taxable period shall be limited to the amount actually paid by such Unrestricted Subsidiary to Parent or its Restricted Subsidiaries for the purposes of paying such consolidated, combined or similar Taxes;

(c) customary salary, bonus and other benefits payable to officers and employees of any Parent Company to the extent such salaries, bonuses and other benefits are reasonably attributable to the ownership or operations of Parent and its Restricted Subsidiaries, provided that the aggregate amount of Dividends paid pursuant to this clause (c), when taken together with the aggregate amount of Dividends and fees paid pursuant to clause (x)(a) below and Section 10.06(v), shall not exceed \$15,000,000 during any fiscal year of Parent;

(d) general corporate operating and overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties) of any

Parent Company to the extent such costs and expenses are reasonably attributable to the ownership or operations of Parent and its Restricted Subsidiaries;

(e) cash payments in lieu of issuing fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of Parent or any Parent Company; and

(f) any customary, reasonable and documented fees and expenses related to any unsuccessful equity offering by any Parent Company directly attributable to the operations of Parent and its Restricted Subsidiaries;

(ix) Parent may authorize, declare and pay cash Dividends to any Parent Company (who may subsequently pay cash Dividends to any other Parent Company) so long as the proceeds thereof are used to pay reasonable and customary indemnities to directors, officers and employees of any Parent Company in the ordinary course of business, to the extent reasonably attributable to the ownership or operation of Parent and its Restricted Subsidiaries;

(x) Parent may authorize, declare and pay cash Dividends or other distributions to any Parent Company so long as the proceeds thereof are promptly used by such Parent Company (or subsequently paid to any other Parent Company) for payment of obligations under or in respect of director and officer insurance policies to the extent reasonably attributable to the ownership or operation of Parent and its Restricted Subsidiaries;

(xi) Parent or any Restricted Subsidiary may authorize, declare and pay any Dividend or other distributions constituting payments of the merger consideration, or in order to satisfy indemnity and other similar obligations, under the Merger Agreement as in effect on the Closing Date;

(xii) Parent may authorize, declare and pay cash Dividends or other distributions to pay (or pay cash Dividends to any Parent Company (who may subsequently pay cash Dividends to any other Parent Company) so long as the proceeds thereof are used to pay), in each case without duplication, (a) the Sponsor or Sponsor Affiliate fees that are then permitted to be paid pursuant to Section 10.06(v), provided that the aggregate amount of Dividends paid pursuant to this clause (x)(a), when taken together with the aggregate amount of Dividends paid pursuant to clause (vi)(c) above, shall not exceed \$15,000,000 during any fiscal year of Parent, or (b) the Sponsor or Sponsor Affiliate expenses and indemnification payments that are then permitted to be paid pursuant to Section 10.06(viii);

(xiii) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants or similar equity incentive awards shall be permitted;

(xiv) Parent or any Restricted Subsidiary may authorize, declare and pay any Dividends so long as the Distribution Conditions are satisfied on a Pro Forma Basis immediately after giving effect to such Dividend;

(xv) any Restricted Subsidiary may authorize, declare and pay cash Dividends to purchase minority interests in non-Wholly-Owned Subsidiaries; provided that the aggregate amount of such purchases, when added to the aggregate amount of Investments pursuant to Section 10.05(xvii), shall not exceed \$10,000,000;

127

(xvi) Parent or any Restricted Subsidiary may authorize, declare and pay cash Dividends with the Available Equity Amount;

(xvii) Parent or any Restricted Subsidiary may authorize, declare and make Dividends or other distributions payable solely in additional Equity Interests (other than Disqualified Equity Interests, except to the extent paid-in-kind in respect of Disqualified Equity Interests of the same class permitted under Section 10.04) of such Person so long as in the case of a Dividend or other distribution by a Restricted Subsidiary, Parent or a Restricted Subsidiary receives at least its *pro rata* share of such dividend or distribution; and

(xviii) Parent may make regularly scheduled interest payments in respect of the Convertible Senior Notes and may redeem or repurchase the Convertible Senior Notes upon exercise by any holder thereof of any put right arising from the Transaction with proceeds from Permitted Parent Debt permitted under Section 10.04.

In determining compliance with this Section 10.03, amounts loaned or advanced to any Parent Company pursuant to Section 10.05(xxi) shall be deemed to be cash Dividends paid to such Parent Company to the extent provided in said Section 10.05(xxi).

9.20 Indebtedness. Parent will not, and will not permit any of its Restricted Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(v) Indebtedness incurred pursuant to this Agreement and the other Loan Documents;

(vi) Indebtedness under Swap Contracts so long as the entering into of such Swap Contracts is for bona fide hedging activities and not for speculative purposes;

(vii) Indebtedness of Parent and its Restricted Subsidiaries evidenced by Capitalized Lease Obligations and purchase money Indebtedness (including obligations in respect of mortgages, industrial revenue bonds, industrial development bonds and similar financings) described in Section 10.01(vi) or 10.01(vii) and any Refinancing Indebtedness in respect of such Indebtedness; provided that in no event shall the aggregate principal amount of Capitalized Lease Obligations and the principal amount of all such other Indebtedness incurred or assumed in each case after the Closing Date under this clause (iii), when taken together with the aggregate outstanding amount of Investments made under Section 10.05(xxx), exceed the greater of \$200,000,000 and 12.5% of Consolidated Total Assets (determined at the time of incurrence or assumption of such Indebtedness) at any one time outstanding;

(viii) Indebtedness arising out of Sale-Leaseback Transactions permitted by Section 10.01(xviii);

(ix) Indebtedness of a Restricted Subsidiary of Parent acquired pursuant to a Permitted Acquisition (or Indebtedness assumed at the time of a Permitted Acquisition of an asset securing such Indebtedness), provided that (x) such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Permitted Acquisition and (y) in no event shall the aggregate principal amount of Indebtedness incurred or assumed in each case after the Closing Date permitted by this clause (v) exceed the greater of \$100,000,000 and 6.0% of Consolidated Total Assets (determined at the time of incurrence or assumption of such Indebtedness);

128

(x) intercompany Indebtedness among Parent and its Restricted Subsidiaries to the extent permitted by Section 10.05(vi);

(xi) Indebtedness outstanding on the Closing Date and listed on Schedule 10.04 of the Disclosure Letter (“Existing Indebtedness”) and any subsequent extension, renewal or refinancing thereof; provided that the aggregate principal amount of the Indebtedness to be extended, renewed or refinanced does not increase from that amount outstanding at the time of any such extension, renewal or refinancing, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension; provided, however, that such refinancing Indebtedness: (x) has a Weighted Average Life to Maturity at the time such refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness being extended, renewed or refinanced; (y) to the extent such refinancing Indebtedness extends, renews or refinances Indebtedness subordinated or *pari passu* to the Loans, such refinancing Indebtedness is subordinated or *pari passu* to the Loans at least to the same extent as the Indebtedness being extended, renewed or refinanced; and (z) shall not include Indebtedness of a Subsidiary of Parent that is not a Loan Party that refunds, refinances, replaces, renews, extends or defeases Indebtedness of a Loan Party;

(xii) Indebtedness of Foreign Subsidiaries; provided that the aggregate principal amount of Indebtedness outstanding pursuant to this clause (viii) shall not at any time exceed the greater of \$100,000,000 and 11.75% of Consolidated Total Assets (with, for purposes of this clause (viii), Consolidated Total Assets being (x) calculated excluding all assets other than those owned by Foreign Subsidiaries and (y) determined at the time of incurrence of such Indebtedness);

(xiii) (a) guarantees made by Parent or any of its Restricted Subsidiaries of obligations (not constituting debt for borrowed money) of Parent or any of its Restricted Subsidiaries owing to vendors, suppliers and other third parties incurred in the ordinary course of business and (b) Indebtedness of any Loan Party as an account party in respect of trade letters of credit issued in the ordinary course of business;

(xiv) Indebtedness incurred in the ordinary course of business to finance insurance premiums or take-or-pay obligations contained in supply arrangements;

(xv) Indebtedness incurred in the ordinary course of business in respect of netting services, overdraft protections, credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called “purchase cards”, “procurement cards” or “p-cards”), automatic clearinghouse arrangements and other similar services in connection with cash management and deposit accounts and Indebtedness in

connection with the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, including, in each case, Bank Product Obligations;

(xvi) (a) severance, pension and health and welfare retirement benefits or the equivalent thereof to current and former management, employees, officers, directors or consultants of Parent or its Restricted Subsidiaries incurred in the ordinary course of business, (b) Indebtedness representing deferred compensation or stock-based compensation to current or former management, employees, officers, directors or consultants of Parent and the Restricted Subsidiaries and (c) Indebtedness consisting of promissory notes issued by any Loan Party to current or former management, employees, officers, directors or consultants, their respective estates, heirs, beneficiaries, spouses, former spouses, domestic partners or former domestic partners to finance the

purchase or redemption of Equity Interests of Parent or any Parent Company permitted by Section 10.03;

(xvii) endorsements of instruments or other payment items for deposit;

(xviii) refinancings, renewals or extensions of any Indebtedness incurred pursuant to clause (v) above, provided that the aggregate principal amount of the Indebtedness to be refinanced, renewed or extended does not increase from that amount outstanding at the time of any such refinancing, renewal or extension, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension, and is on terms not less favorable in any material respect to the Lenders;

(xix) Permitted Junior Debt of Parent and its Restricted Subsidiaries incurred under Permitted Junior Debt Documents so long as (a) all such Indebtedness is incurred in accordance with the requirements of the definition of Permitted Junior Notes or Permitted Junior Loans, as the case may be, (b) no Event of Default then exists or would result therefrom and (c) unless the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to the incurrence of such Indebtedness, the amount of Permitted Junior Debt which may be incurred pursuant to this clause (xv) shall not exceed the greater of \$50,000,000 and 3.0% of Consolidated Total Assets (determined at the time of incurrence of such Indebtedness);

(xx) Indebtedness and guarantees in respect of customs, stay, performance, appeal, judgment, replevin and similar bonds and suretyship arrangements, value added tax obligations and completion guarantees and other obligations of a like nature, all in the ordinary course of business;

(xxi) Indebtedness to insurers required in connection with worker's compensation and other insurance coverage incurred in the ordinary course of business;

(xxii) guarantees made by Parent or any of its Restricted Subsidiaries of Indebtedness of Parent or any of its Restricted Subsidiaries permitted to be outstanding under this Section 10.04; provided that such guarantees are permitted by Section 10.05;

(xxiii) guarantees made by any Foreign Subsidiary or any other Restricted Subsidiary that is not a Loan Party of Indebtedness of any other Foreign Subsidiary or any other Restricted Subsidiary that is not a Loan Party permitted to be outstanding under this Section 10.04;

(xxiv) guarantees made by Restricted Subsidiaries acquired pursuant to a Permitted Acquisition of Indebtedness acquired or assumed pursuant thereto in accordance with Section 10.04, or any refinancing thereof pursuant to Section 10.04; provided that such guarantees may only be made by Restricted Subsidiaries who were guarantors of the Indebtedness originally acquired or assumed pursuant to Section 10.04 at the time of the consummation of the Permitted Acquisition to which such Indebtedness relates;

(xxv) customary guarantees in connection with sales, other dispositions and leases permitted under Section 10.02, other than pursuant to Section 10.02(xxv), (but not in respect of Indebtedness for borrowed money

or Capitalized Lease Obligations) including indemnification obligations with respect to leases, and guarantees of collectability in respect of accounts receivable or notes receivable for up to face value;

(xxvi) guarantees of Indebtedness of management, directors, officers, employees and consultants of Parent or any of its Restricted Subsidiaries in respect of expenses of such Persons in connection with relocations and other ordinary course of business purposes;

(xxvii) guarantees of Indebtedness of a Person in connection with a Joint Venture, provided that the aggregate principal amount of any Indebtedness so guaranteed shall not exceed the greater of \$50,000,000 and 3.0% of Consolidated Total Assets (determined at the time of incurrence of such guarantee of such Indebtedness);

(xxviii) contingent liabilities in respect of any indemnification obligation or adjustment of purchase price incurred in connection with the consummation of one or more Permitted Acquisitions or other Investments;

(xxix) subject to the Intercreditor Agreement, Indebtedness in respect of the 7.875% Senior Notes in an aggregate amount not to exceed \$415,000,000, and Refinancing Indebtedness in respect thereof;

(xxx) Additional Debt of Parent and its Restricted Subsidiaries so long as (a) all such Additional Debt is incurred in accordance with the requirements of the definition of Additional Debt and (b) the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to the incurrence of such Indebtedness, and Refinancing Indebtedness in respect thereof;

(xxxi) unsecured Indebtedness under the Convertible Senior Notes Documents in an aggregate amount not to exceed \$200,000,000, and Refinancing Indebtedness in respect thereof, provided, that (a) Parent shall consummate the repurchase of any Convertible Senior Notes required as a result of the Transaction in accordance with the terms of the Convertible Senior Notes Indenture, (b) such \$200,000,000 shall be reduced by the principal amount of Convertible Senior Notes that are so repurchased and (c) the Convertible Senior Notes shall be Refinanced solely with proceeds from Permitted Parent Debt permitted under this Section 10.04;

(xxxii) Indebtedness of Fresh Express as successor-by-merger to Fresh-Cuts Incorporated, in an aggregate amount not to exceed \$27,000,000 to Fresh International pursuant to the Georgia Lease and related agreements, instruments and documents;

(xxxiii) Indebtedness of Fresh Express pursuant to a lease of its Streamwood, Illinois facility, the aggregate outstanding amount of which does not exceed \$50,000,000;

(xxxiv) any other unsecured Indebtedness incurred by Parent or any of its Subsidiaries in an aggregate amount not to exceed \$25,000,000;

(xxxv) Indebtedness of Chiquita Banana Company B.V. (and of such additional Subsidiaries that are CFCs that may from time to time be joined as borrowers under such credit facility) in an aggregate amount not to exceed EUR 17,000,000 or the equivalent thereof in alternate currencies under the Netherlands Guarantee Facility;

(xxxvi) Permitted Parent Debt in an aggregate outstanding amount not to exceed \$287,550,000 so long as such Permitted Parent Debt is incurred and remains outstanding in accordance with the requirements of Permitted Parent Debt; and

(xxxvii) all premiums (if any), interest (including post-petition interest), accretion, amortization, original issue discount, payment of interest in kind, fees, expenses, charges and additional or contingent interest on

obligations described in clauses (i) through (xxxii) above.

9.21 Advances, Investments and Loans. Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, lend money or credit or make advances to any Person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, or other investment in, any other Person, or designate a Subsidiary as an Unrestricted Subsidiary (each of the foregoing, an “Investment” and, collectively, “Investments” and with the value of each Investment being measured at the time made and without giving effect to subsequent changes in value or any write-ups, write-downs or write-offs thereof but giving effect to any cash return or cash distributions received by Parent and its Restricted Subsidiaries with respect thereto), except that the following shall be permitted:

(i) Parent and its Restricted Subsidiaries may acquire and hold accounts receivable owing to any of them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms of Parent or such Restricted Subsidiary;

(ii) Parent and its Restricted Subsidiaries may acquire and hold cash and Cash Equivalents;

(iii) Parent and its Restricted Subsidiaries (a) may hold the Investments existing on the Closing Date in Parent or any Restricted Subsidiary, provided that any such Investment by a Restricted Subsidiary that is not a Loan Party in any Loan Party is described on Schedule 10.05 to the Disclosure Letter, and (b) may make and hold the Investments held by them (or that are made pursuant to legally binding written commitments existing) on the Closing Date and described on Schedule 10.05 to the Disclosure Letter, and any modification, replacement, renewal or extension thereof that does not increase the principal amount thereof unless any additional Investments made with respect thereto are made pursuant to legally binding written commitments existing on the Closing Date and set forth in such Schedule 10.05(iii) or are permitted under the other provisions of this Section 10.05;

(iv) Parent and its Restricted Subsidiaries may acquire and hold Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers, and Investments received in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers;

(v) Parent and its Restricted Subsidiaries may enter into Swap Contracts to the extent permitted by Section 10.04(ii);

(vi) (a) Parent and any Restricted Subsidiary may make intercompany loans to, guarantees on behalf of, and other Investments in Loan Parties, (b) any Foreign Subsidiary or other Restricted Subsidiary that is not a Loan Party may make intercompany loans to, guarantees on behalf of, and other Investments in, Parent or any of its Restricted Subsidiaries so long as in the case of such intercompany loans to Loan Parties, all payment obligations of the respective Loan Parties are subordinated to their obligations under the Loan Documents on terms reasonably satisfactory to the Agent, (c) the Loan Parties may make intercompany loans to, guarantees on behalf of, and other Investments in, Subsidiaries that are not Loan Parties so long as (1) such intercompany loans, guarantees or other Investments arise in the ordinary course of business reasonably consistent with past practices, or (2) if such intercompany loans, guarantees or other Investments do not arise in the ordinary course of business reasonably consistent with past practices, the aggregate amount of

outstanding loans, guarantees and other Investments made pursuant to this sub-clause (c)(2) does not exceed the greater of \$20,000,000 and 1.25% of Consolidated Total Assets (determined at the time such Investment is made), (d) any Restricted Subsidiary that is not a Loan Party may make intercompany loans to, guarantees on behalf of and other Investments in, any other Restricted Subsidiary that is also not a Loan Party and (e) Loan Parties may make intercompany loans and other Investments in any Restricted Subsidiary that is not a Loan Party so long as

such Investment is part of a series of simultaneous Investments by Restricted Subsidiaries in other Restricted Subsidiaries that results in the proceeds of the initial Investment being invested in one or more Loan Parties;

(vii) Permitted Acquisitions shall be permitted in accordance with Section 9.14;

(viii) loans and advances by Parent and its Restricted Subsidiaries to management, officers, directors, employees and consultants of Parent and its Restricted Subsidiaries in connection with (a) relocations and other ordinary course of business purposes (including travel and entertainment expenses) shall be permitted and (b) any such Person's purchase of Equity Interests of Parent or any Parent Company, provided that no cash is actually advanced pursuant to this clause (b) unless immediately repaid;

(ix) advances of payroll payments to management, officers, directors, employees and consultants of Parent and its Restricted Subsidiaries in the ordinary course of business;

(x) non-cash consideration may be received in connection with any sale of assets permitted pursuant to Section 10.02 (other than pursuant to Section 10.02(xxv));

(xi) additional Restricted Subsidiaries of Parent may be established or created if Parent and such Subsidiary comply with the requirements of Section 9.12, if applicable; provided that to the extent any such new Subsidiary is created solely for the purpose of consummating a transaction pursuant to an acquisition permitted by this Section 10.05, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such transaction, such new Subsidiary shall not be required to take the actions set forth in Section 9.12, as applicable, until the respective acquisition is consummated (at which time the surviving or transferee entity of the respective transaction and its Subsidiaries shall be required to so comply in accordance with the provisions thereof);

(xii) extensions of trade credit may be made in the ordinary course of business (including advances made to distributors consistent with past practice), Investments received in satisfaction or partial satisfaction of previously extended trade credit from financially troubled account debtors, Investments consisting of advances and prepayments to suppliers made in the ordinary course of business and loans or advances made to distributors in the ordinary course of business;

(xiii) earnest money deposits may be made to the extent required in connection with Permitted Acquisitions and other Investments to the extent permitted under Section 10.01(xxviii);

(xiv) Investments in Deposit Accounts or Securities Accounts opened in the ordinary course of business;

(xv) Investments in the nature of pledges or deposits with respect to leases or utilities, or as required by Governmental Authorities or other third parties, including suppliers, in the ordinary course of business;

(xvi) Investments in the ordinary course of business consisting of endorsements for collection or deposit;

(xvii) purchases of minority interests in non-Wholly-Owned Subsidiaries by Parent and its Restricted Subsidiaries; provided that the aggregate amount of such purchases, when added to the aggregate amount of Dividends pursuant to Section 10.03(xiii), shall not exceed \$10,000,000;

(xviii) Investments (other than Permitted Acquisitions) so long as the Payment Conditions are satisfied on a pro forma basis immediately after giving effect to such Investments;

(xix) Investments made with the Available Equity Amount;

(xx) the licensing or sublicensing of Intellectual Property rights pursuant to arrangements with Persons other than Parent and the Restricted Subsidiaries in the ordinary course of business for fair market value, as determined by Parent or such Restricted Subsidiary, as the case may be, in good faith, and solely to the extent permitted under Section 10.01(v);

(xxi) loans and advances to any Parent Company in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Dividends made to any Parent Company), Dividends permitted to be made to any Parent Company in accordance with Section 10.03; provided that any such loan or advance shall reduce the amount of such applicable Dividend thereafter permitted under Section 10.03 by a corresponding amount (if such applicable subsection of Section 10.03 contains a maximum amount);

(xxii) Investments to the extent that payment for such Investments is made solely by the issuance of Qualified Equity Interests in Parent (or any Equity Interests in any other Parent Company) to the seller of such Investments;

(xxiii) Investments of a Person that is acquired and becomes a Restricted Subsidiary or of a company merged or amalgamated or consolidated into any Restricted Subsidiary, in each case after the Closing Date and in accordance with this Section 10.05 and/or Section 10.02 (other than pursuant to Section 10.02(xxv)), as applicable, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation, do not constitute a material portion of the aggregate assets acquired in such transaction and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(xxiv) Investments in a Restricted Subsidiary that is not a Loan Party or in a Joint Venture, in each case, to the extent such Investment is substantially contemporaneously repaid in full with a cash dividend or other cash distribution from such Restricted Subsidiary or Joint Venture;

(xxv) Investments made on or prior to the Closing Date to consummate the Transaction;

(xxvi) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case, in the ordinary course of business;

(xxvii) to the extent they constitute Investments, advances by Parent or any of its Restricted Subsidiaries in the ordinary course of business to growers or suppliers for agricultural commodities as advances for such products;

(xxviii) Investments in the ordinary course of business with respect to performance bonds, bankers' acceptance, workers' compensation claims, surety or appeal bond payments, obligations in connection with self-insurance or similar obligations and bank overdrafts;

(xxix) to the extent they constitute Investments, (a) Liens permitted under Section 10.01 and (b) guarantees permitted under Section 10.04;

(xxx) so long as no Event of Default has occurred and is continuing, Investments in Joint Ventures, partnerships or otherwise to acquire, build, re-build, develop or improve Fleet Assets in an aggregate amount not to exceed, when taken together with the aggregate outstanding principal amount of Indebtedness incurred under Section 10.04(iii), \$200,000,000 at any time outstanding during the time of this Agreement; and

(xxxi) any other Investments in an aggregate amount, together with the aggregate amount of all other Investments made in reliance on this clause (xxxi), measured at the time such Investment is made, not to exceed the greater of \$20,000,000 and 1.25% of Consolidated Total Assets (determined at the time such Investment is made).

9.22 Transactions with Affiliates. Parent will not, and will not permit any of its Restricted Subsidiaries to, enter into any transaction or series of related transactions with any Affiliate of Parent or any of its Subsidiaries, other than on terms and conditions not less favorable to Parent or such Restricted Subsidiary as would reasonably be obtained by Parent or such Restricted Subsidiary at that time in a comparable arm's-length transaction with a Person other than an Affiliate, except:

(i) Dividends may be paid to the extent provided in Section 10.03, Liens may be incurred to the extent permitted under Section 10.01 and Indebtedness may be incurred to the extent permitted under Section 10.04;

(ii) loans and other transactions among Parent, the Lead Borrower and its Restricted Subsidiaries may be made to the extent otherwise expressly permitted under Section 10;

(iii) customary fees and indemnification (including the reimbursement of out-of-pocket expenses) may be paid to directors of Parent and its Restricted Subsidiaries (and, to the extent directly attributable to the operations of Parent and its Restricted Subsidiaries, to any other Parent Company);

(iv) Parent and its Restricted Subsidiaries may enter into, and may make payments under, employment agreements, employee benefits plans, stock option plans, indemnification provisions, stay bonuses, severance and other similar compensatory arrangements with management, officers, consultants, employees and directors of Parent and its Restricted Subsidiaries in the ordinary course of business;

(v) so long as no Event of Default shall exist (both before and immediately after giving effect thereto), Parent and/or the Lead Borrower may pay fees to the Sponsor or the Sponsor Affiliates (or dividend such funds to any Parent Company to be paid to the Sponsor or the Sponsor Affiliates) in an amount not to exceed, when taken together with the aggregate amount of Dividends paid pursuant to Section 10.03(vi)(c), \$15,000,000 in any fiscal year;

(vi) the Transaction (including Transaction Costs) shall be permitted;

135

(vii) to the extent not otherwise prohibited by this Agreement, transactions between or among Parent and any of its Restricted Subsidiaries shall be permitted (including equity issuances);

(viii) Parent may make payments (or make Dividends to a Parent Company to make payments) to reimburse the Sponsor or the Sponsor Affiliates for its reasonably incurred and documented out of pocket expenses, and to indemnify it, on a reasonable and customary basis, in connection with financial advisory, financing or other investment banking activities or management, monitoring or other services provided to Parent, the Borrowers or any other Restricted Subsidiary (including in connection with Acquisitions or sales, transfers or other dispositions of assets, whether or not consummated);

(ix) the issuance of Qualified Equity Interests in Parent to the Sponsor or any Parent Company, or to any management, director, officer, employee or consultant thereof;

(x) transactions described on Schedule 10.06 to the Disclosure Letter or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect;

(xi) Investments by Parent and its Subsidiaries in Parent's Subsidiaries and Joint Ventures (to the extent any such Subsidiary that is not a Restricted Subsidiary or any such Joint Venture is only an Affiliate as a result of Investments by Parent and the Restricted Subsidiaries in such Subsidiary or Joint Venture) to the extent otherwise permitted under Section 10.05;

(xii) any payments required to be made pursuant to the Merger Agreement; and

(xiii) transactions between Parent and any Person that is an Affiliate solely due to the fact that a director of such Person is also a director of Parent or any Parent Company; provided, however, that such director