

the books of such Loan Party, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

8.19 Intellectual Property. Each of the Significant Parties owns or has the right to use all the patents, trademarks, domain names, service marks, trade names, copyrights, inventions, trade secrets, formulae, proprietary information and know-how of any type, whether or not written (including, but not limited to, rights in computer programs and databases) (collectively, “Intellectual Property”), necessary for the present conduct of its respective business, without any known conflict with the Intellectual Property rights of others, except for such failures to own or have the right to use and/or conflicts as have not had, and would not reasonably be expected to have, a Material Adverse Effect.

8.20 Legal Names; Type of Organization (and Whether a Registered Organization); Jurisdiction of Organization; Holding Company Status etc. Schedule 8.20 of the Disclosure Letter contains for each Loan Party, as of the Closing Date, (i) the exact legal name of such Loan Party, (ii) the type of organization of such Loan Party, (iii) whether or not such Loan Party is a registered organization, (iv) the jurisdiction of organization of such Loan Party, (v) such Loan Party’s Location and (vi) the organizational identification number (if any) of such Loan Party. To the extent that such Loan Party does not have an organizational identification number on the Closing Date and later obtains one, such Loan Party shall promptly thereafter notify the Agent of such organizational identification number and shall take all actions reasonably satisfactory to the Agent to the extent necessary to maintain the security interest of the Agent in the Collateral intended to be granted pursuant to the Security Documents fully perfected and in full force and effect.

8.21 Borrowing Base Certificate. The information set forth in each Borrowing Base Certificate (a) is true and correct in all material respects, in each case as of the date such information is required to be determined in accordance with Section 9.16(a), and (b) has been prepared in all material respects in accordance with the requirements of this Agreement, in each case, as of the date of delivery of such Borrowing Base Certificate.

Section 9. Affirmative Covenants. Each of Parent and the Borrowers hereby covenants and agrees that on and after the Closing Date and so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than (i) any contingent indemnification obligations and expense reimbursement obligations arising hereunder which are not then due and payable and (ii) Bank Product Obligations) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless Cash Collateralized or backstopped on terms reasonably satisfactory to the Agent and Issuing Bank):

9.01 Information Covenants. The Lead Borrower will furnish to the Agent for distribution to each Lender:

(a) Quarterly Financial Statements. Within 45 days after the close of each of the first three quarterly accounting periods in each fiscal year of Parent, (i) the unaudited consolidated balance sheet of Parent and its consolidated Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of income, comprehensive income and cash flows

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for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period (provided that in the case of statements of cashflows, only the statement for the elapsed portion of the fiscal year ended shall be provided), in each case setting forth comparative figures for the corresponding quarterly accounting period in the prior fiscal year, all of which shall be certified by a Responsible Officer of Parent that they fairly present in all material respects in accordance with U.S. GAAP the consolidated financial condition of Parent and its consolidated Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to year-end audit and normal adjustments (including adjustments from income tax calculations and quarterly cut-off procedures) and the absence of footnotes, and (ii) management’s discussion and analysis of the important operational and financial developments during such quarterly accounting period (or other suitable commentary prepared for internal use by Parent in the ordinary course and otherwise reasonably satisfactory to the Agent). If Parent has filed (within the time period required above) a Form 10-Q with

the SEC for any fiscal quarter described above, then to the extent that such quarterly report on Form 10-Q contains any of the foregoing items, the Lenders shall accept such Form 10-Q in lieu of such items.

(b) Annual Financial Statements. Within 90 days after the close of each fiscal year of Parent, (i) the consolidated balance sheet of Parent and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income, comprehensive income and cash flows for such fiscal year setting forth (commencing with Parent's fiscal year ending December 31, 2014) comparative figures for the preceding fiscal year and certified, in the case of consolidated financial statements, by PricewaterhouseCoopers LLP or other independent certified public accountants of recognized national standing reasonably acceptable to the Agent, together with an opinion of such accounting firm (which opinion shall be without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit, other than solely on account of any upcoming maturity date with respect to Obligations under this Agreement, the Existing Notes or any refinancing of Indebtedness existing on the Closing Date that is permitted under this Agreement or on account of any anticipated or actual inability to satisfy any financial maintenance covenant under this Agreement, the Existing Notes or any refinancing of Indebtedness existing on the Closing Date that is permitted under this Agreement) to the effect that such statements fairly present in all material respects in accordance with U.S. GAAP the financial condition of Parent and its consolidated Subsidiaries as of the date indicated and the results of their operations and changes in their cash flows for the periods indicated, and (ii) management's discussion and analysis of the important operational and financial developments during such fiscal year (or other suitable commentary prepared for internal use by Parent in the ordinary course and otherwise reasonably satisfactory to the Agent). If Parent has filed (within the time period required above) a Form 10-K with the SEC for any fiscal year described above, then to the extent that such annual report on Form 10-K contains any of the foregoing items, the Lenders shall accept such Form 10-K in lieu of such items.

(c) Annual Budget. No later than 90 days following the first day of each fiscal year of Parent, an annual budget in form reasonably satisfactory to the Agent (including Projections for Parent and its Restricted Subsidiaries on a consolidated basis) for each of the twelve months of such fiscal year prepared in reasonable detail, with appropriate discussion, and providing the principal assumptions upon which such forecast is based.

(d) [Reserved]

(e) Officer's Certificates. At the time of the delivery of the Section 9.01 Financials, a Compliance Certificate, certifying on behalf of the Lead Borrower that, to such Responsible Officer's knowledge after due inquiry, no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof, which certificate shall (i) set forth the reasonably detailed calculations with respect to the Fixed Charge Coverage Ratio for such period, (ii) certify that there have been no changes to Schedule 3(b) to the Perfection Certificate since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant to this clause (ii), or if there have been any such changes, a list in reasonable detail of such changes, (iii) certify that there have been no changes to the locations where Collateral in an aggregate amount (for any one location) in excess of \$100,000 is located on any Real Property of any Grantor that is leased by such Grantor from a third party since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant to this clause (iii), or if there have been any such changes, a list in reasonable detail of such changes, and (iv) if such Compliance Certificate is being delivered in connection with annual financial statements under Section 9.01(b), certify that there have been no changes to Schedule 1, 2, 3, 4, 5, 6, 7, 9 or 11, in each case, to the Security Agreement, in each case since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant to this clause (iv), or if there have been any such changes, a list in reasonable detail of such changes (but, in each case with respect to this clause (iv), only to the extent that such changes are required to be reported to the Agent pursuant to the terms of such Security Documents) and whether the Lead Borrower and the other Loan Parties have otherwise taken all actions required to be taken by them pursuant to such Security Documents in connection with any such changes.

(f) Notice of Default, Litigation, Material Adverse Effect and Change in Purchasing. Promptly after any officer of Parent or the Lead Borrower obtains knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default or an Event of Default or any default or event of default under any the Existing Note Documents or any other Indebtedness in excess of the Threshold Amount, (ii) any litigation or governmental investigation or proceeding pending against Parent or any of its Restricted Subsidiaries (x) which, either individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect or (y) with respect to any Loan Document, (iii) any material change in the purchasing decisions of Parent or its Subsidiaries with respect to bananas or other agricultural products that may, in the reasonable determination of Parent or Lead Borrower, lead to a material increase in third party claims against Parent or any of its Subsidiaries related to PACA or related laws or regulations, or (iv) any other event, change or circumstance that has had, or would reasonably be expected to have, a Material Adverse Effect.

(g) Other Reports and Filings. Promptly after the filing or delivery thereof, copies of all financial information, proxy materials and reports, if any, which Parent or any of its Restricted Subsidiaries shall publicly file with the SEC or to deliver to holders (or any trustee, agent or other representative therefor) of the Existing Notes pursuant to the terms of the Existing Notes Documents.

(h) Environmental Matters. Promptly after any officer of Parent or the Lead Borrower obtains written notice thereof, provide written notice of one or more of the following environmental matters to the extent that such environmental matters, either individually or when aggregated with all other such environmental matters, could reasonably be expected to result in a Material Adverse Effect:

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(i) commencement of any Environmental Claim against the Lead Borrower or any other Significant Party or any Real Property owned by the Lead Borrower or any other Significant Subsidiary;

(ii) any reportable Release on or arising from any Real Property owned, leased or operated by the Lead Borrower or any other Significant Party that (A) results in any material noncompliance by the Lead Borrower or any other Significant Party with any applicable Environmental Law or (B) would reasonably be expected to form the basis of an Environmental Claim against the Lead Borrower or any other Significant Party;

(iii) any reportable Release on any Real Property owned, leased or operated by the Lead Borrower or any other Significant Party that could reasonably be expected to cause such Real Property to be subject to any Lien or similar restrictions on the ownership, lease, occupancy, use or transferability by the Lead Borrower or any other Significant Party of such Real Property under any Environmental Law; and

(iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property owned, leased or operated by the Lead Borrower or any other Significant Party as required by any Environmental Law or any governmental or other administrative agency, and all notices received by the Lead Borrower or any other Significant Party from any government or governmental agency under, or pursuant to, CERCLA which identify the Lead Borrower or any other Significant Party as potentially responsible parties for remediation costs or which otherwise notify the Lead Borrower or any other Significant Party of potential liability under CERCLA.

All such notices shall describe in reasonable detail the nature of the claim, investigation, reportable Release or removal or remedial action and the Lead Borrower's or such other Significant Party's response thereto. Notwithstanding anything to the contrary contained above, notice shall not be required to be given of the matters disclosed in the Merger Agreement, except that if there are any adverse developments with respect to matters so disclosed which would rise to the standards set forth above, then a subsequent notice shall be required.

(i) Financial Statements of Unrestricted Subsidiaries. Simultaneously with the delivery of each set of Section 9.01 Financials, a reasonably detailed reconciliation (which may be in footnote form) reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

(j) Other Information. From time to time, such other information or documents (financial or otherwise) with respect to the Lead Borrower or any of its Subsidiaries as the Agent or any Lender (through the Agent) may reasonably request.

#### 9.02 Books, Records and Inspections.

(a) Parent will, and will cause each other Significant Party to, keep proper books of record and accounts in which full, true and correct entries in conformity with U.S. GAAP in all material respects shall be made of all dealings and transactions and matters involving the assets and business of Parent or such other Significant Party, as the case may be (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in a manner to allow financial statements to be prepared in conformity with generally accepted accounting principles that are applicable in their respective jurisdictions of organization).

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(b) Parent and the Lead Borrower will permit the Agent, subject to reasonable advance notice to, and reasonable coordination with, Parent and the Lead Borrower and normal business hours, to visit and inspect the properties of Parent or any Borrower, at the Borrowers' expense as provided in clause (c) below, inspect, audit and make extracts from Parent or any Borrower's corporate, financial or operating records, and discuss with its officers, advisors and independent accountants (subject to such accountants' customary policies and procedures) Parent's or such Borrower's business, financial condition, assets and results of operations (it being understood that a representative of Parent or the Lead Borrower is allowed to be present in any discussions with officers, advisors and independent accountants); provided that the Agent shall only be permitted to conduct one field examination and one inventory appraisal with respect to any Collateral comprising the Borrowing Base per 12-month period; provided, further, that if at any time Availability is less than 20% of the Line Cap for a period of 5 consecutive Business Days during such 12-month period, one additional field examination and one additional inventory appraisal of Collateral will be permitted in such 12-month period and except that during the continuance of an Event of Default, there shall be no limit on the number of additional field examinations and inventory appraisals of Collateral that shall be permitted at the Agent's request. No inspection shall involve invasive testing without the prior written consent of the Lead Borrower. Neither the Agent nor any Lender shall have any duty to Parent or any Borrower to make any inspection, nor to share any results of any inspection, appraisal or report with Parent or any Borrower. Each of Parent and the Borrowers acknowledges that all inspections, appraisals and reports are prepared by the Agent and Lenders for their purposes, and Parent and the Borrowers shall not be entitled to rely upon them.

(c) The Borrowers will reimburse the Agent for all reasonable out-of-pocket costs and expenses (other than any legal fees or costs and expenses covered under Section 13.01) of the Agent in connection with (i) one examination per fiscal year of any Borrower's books and records or any other financial or Collateral matters as the Agent deems appropriate and (ii) field examinations and inventory appraisals of Collateral comprising the Borrowing Base in each case subject to the limitations on such examinations, audits and appraisals permitted under the preceding paragraph. Subject to and without limiting the foregoing, the Borrowers specifically agree to pay the Agent's then standard charges for examination activities, including the standard charges of the Agent's internal appraisal group (which charges shall be limited to a rate per day per person equal to the lesser of \$1,000 and the rate that would be charged by such personnel on a per day basis for such examination activities). This Section shall not be construed to limit the Agent's right to use third parties for such purposes.

#### 9.03 Maintenance of Property; Insurance.

(a) Parent will, and will cause each other Significant Party to, (i) keep all tangible property necessary to the business of Parent and the other Significant Parties in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, except where failure to do so would not reasonably be expected to have a Material Adverse

Effect, (ii) maintain with financially sound and reputable insurance companies insurance (in the good faith judgment of Parent or the Lead Borrower) on all such property and against all such risks as is consistent and in accordance with industry practice for companies similarly situated owning similar properties and engaged in similar businesses as Parent and the other Significant Parties, and (iii) furnish to the Agent, upon its reasonable request therefor, information as to the insurance carried. The provisions of this Section 9.03 shall be deemed supplemental to, but not duplicative of, the provisions of any Security Documents that require the maintenance of insurance.

(b) If at any time the improvements on a Mortgaged Property are located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of

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1968 (as now or hereafter in effect or successor act thereto), then Parent shall, or shall cause the applicable Loan Party to maintain, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and deliver to the Agent evidence of such insurance in form and substance reasonably acceptable to the Agent.

(c) Parent will, and will cause each Loan Party to, at all times keep its property insured in favor of the Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other material policy of general liability or casualty insurance maintained by or on behalf of any Loan Party) (i) shall be endorsed to the Agent's reasonable satisfaction for the benefit of the Agent (including, without limitation, by naming the Agent as loss payee and/or additional insured) and (ii) if agreed by the insurer (which agreement the Lead Borrower shall use commercially reasonable efforts to obtain), shall state that such insurance policies shall not be canceled without at least 30 days' prior written notice thereof (or, with respect to non-payment of premiums, 10 days' prior written notice) by the respective insurer to the Agent; provided that the requirements of this Section 9.03(c) shall not apply to (x) insurance policies covering (1) directors and officers, fiduciary or other professional liability, (2) employment practices liability, (3) workers compensation liability, (4) automobile and aviation liability, (5) health, medical, dental and life insurance, and (6) such other insurance policies and programs for which endorsements are not customary or as the Agent may approve; and (y) self-insurance programs.

(d) If Parent or any other Loan Party shall fail to maintain insurance in accordance with this Section 9.03, or Parent or any other Loan Party shall fail to so endorse the applicable policies or certificates with respect thereto, after any applicable grace period, the Agent shall have the right (but shall be under no obligation) to procure such insurance and the Loan Parties jointly and severally agree to reimburse the Agent for all reasonable costs and expenses of procuring such insurance.

9.04 Existence; Franchises. Parent will, and will cause each other Significant Party to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and, in the case of Parent and the other Significant Parties, its and their rights, franchises, licenses, permits, and Intellectual Property, in each case to the extent material; provided, however, that nothing in this Section 9.04 shall prevent (i) sales of assets and other transactions by Parent or any of its Restricted Subsidiaries in accordance with Section 10.02, (ii) the abandonment by Parent or any of its Restricted Subsidiaries of any rights, franchises, licenses, permits, or Intellectual Property in the ordinary course of business that Parent reasonably determines in good faith are no longer material to the operations of Parent and its Restricted Subsidiaries taken as a whole or (iii) the withdrawal by Parent or any of its Restricted Subsidiaries of its qualification as a foreign corporation, partnership, limited liability company or unlimited liability company or other organizational entity, as the case may be, in any jurisdiction if such withdrawal would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

9.05 Compliance with Statutes, etc. Parent will, and will cause each of its Restricted Subsidiaries (other than any Immaterial Subsidiaries) to, comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental protection, OFAC, FCPA, the United Kingdom Bribery Act of 2010 and other similar anti-corruption legislation in other relevant jurisdictions,

and the PATRIOT Act), except such non-compliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

9.06 Compliance with Environmental Laws.

(a) Parent will comply, and will cause each other Significant Party to comply, with all Environmental Laws and permits applicable to, or required by, the ownership, lease or use of Real Property now or hereafter owned, leased or operated by Parent or any other Significant Party and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, except such non-compliances or non-payment as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws (other than Liens imposed on leased Real Property resulting from the acts or omissions of the owner of such leased Real Property or of other tenants of such leased Real Property who are not within the control of Parent). Except as would not reasonably be expected to have, a Material Adverse Effect, neither Parent nor any other Significant Party will generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of Hazardous Materials on any Real Property now or hereafter owned, leased or operated by Parent or any other Significant Party, or transport or permit the transportation of Hazardous Materials to or from any such Real Property, except for Hazardous Materials generated, used, treated, stored, Released or disposed of at any such Real Properties or transported to or from such Real Properties in compliance with all applicable Environmental Laws.

(b) (i) After the receipt by the Agent or any Lender of any notice of the type described in Section 9.01(h), (ii) at any time that Parent or any other Significant Party is not in compliance with Section 9.06(a) or (iii) at any time when an Event of Default is in existence, the Loan Parties will (in each case) jointly and severally provide, at the written request of the Agent, a Phase I environmental site assessment report concerning any Mortgaged Property owned, leased or operated by Parent or any other Significant Party (in the event of (i) or (ii) that is the subject of or could reasonably be expected to be the subject of such notice or noncompliance), prepared by an environmental consulting firm reasonably approved by the Agent, indicating the presence or absence of Hazardous Materials and the reasonable worst case cost of any removal or remedial action in connection with such Hazardous Materials on such Mortgaged Property. If the Loan Parties fail to provide the same within 30 days after such request was made, the Agent may order the same, the reasonable cost of which shall be borne by the Lead Borrower, and the Loan Parties shall grant and hereby grant to the Agent and the Lenders and their respective agents access to such Mortgaged Property and specifically grant the Agent and the Lenders a license to undertake such an assessment at any reasonable time upon reasonable notice to the Lead Borrower, all at the sole expense of the Loan Parties (who shall be jointly and severally liable therefor).

9.07 ERISA. As soon as possible and, in any event, within ten (10) Business Days after any officer or director of Parent or the Lead Borrower knows of the occurrence of any of the following, Parent will deliver to the Agent a certificate of a Responsible Officer of Parent setting forth the full details as to such occurrence and the action, if any, that any Significant Party or an ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given or filed by such Significant Party, the Plan administrator or such ERISA Affiliate to or with the PBGC or any other Governmental Authority, or a Plan participant and any notices received by such Significant Party or such ERISA Affiliate from the PBGC or any other Governmental Authority, or a Plan participant with respect thereto: that (a) an ERISA Event has occurred that is reasonably expected to result in a Material Adverse Effect; (b) there has been an increase in Unfunded Pension Liabilities since the date the representations hereunder are given, or from any prior notice, as applicable, in either case, which is reasonably expected to result in a Material Adverse Effect; (c) any Significant Party or any ERISA Affiliate adopts, or commences contributions to, any Plan subject to Section 412 of the Code, or adopts any amendment to a Plan subject to Section 412 of the Code which is reasonably expected to result in a Material Adverse Effect; (d) that a contribution required to be made with

respect to a Foreign Pension Plan has not been timely made which failure is reasonably likely to result in a Material Adverse Effect; or (e) that a Foreign Pension Plan has been or is reasonably expected to be terminated, reorganized, partitioned or declared insolvent and such event is reasonably expected to result in a Material Adverse Effect. Parent will also deliver to the Agent, upon request by the Agent, a complete copy of the most recent annual report (on Internal Revenue Service Form 5500-series, including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information) filed with the Internal Revenue Service or other Governmental Authority of each Plan that is maintained or sponsored by a Significant Party.

9.08 End of Fiscal Years; Fiscal Quarters. Parent will not and will not permit any of its Restricted Subsidiaries to change its fiscal year or fiscal quarters (other than, in the case of any Restricted Subsidiary, to match that of Parent).

9.09 [Reserved] Payment of Taxes

9.10 Use of Proceeds. Each Borrower will use the proceeds of the Loans only as provided in Section 8.08, and for the avoidance of doubt, will not use any such proceeds for any purpose that would breach the FCPA, the United Kingdom Anti Bribery Act of 2010 or any other similar anti-corruption legislation in other relevant jurisdictions.

9.11 Additional Security; Further Assurances; etc.

(a) Parent will, and will cause each other Loan Party to, grant to the Agent for the benefit of the Secured Parties security interests and Mortgages in such assets and properties (other than Excluded Property and, in the case of Real Property, limited to Material Real Property) of Parent and such other Loan Parties as are not covered by the original Security Documents and as may be reasonably requested from time to time by the Agent or the Required Lenders (collectively, as may be amended, modified or supplemented from time to time, the “Additional Security Documents”); provided that (i) the pledge of the outstanding capital stock of any FSHCO or Foreign Subsidiary directly owned by a Loan Party shall be limited to (x) no more than sixty-five percent (65%) of the total combined voting power for all classes of the voting Equity Interests of such FSHCO or Foreign Subsidiary and (y) one-hundred percent (100%) of the non-voting Equity Interests of such FSHCO or Foreign Subsidiary, (ii) security interests and Mortgages shall not be required with respect to any Real Property that is not Material Real Property and (iii) security interests and Mortgages shall not be required with respect to any assets or properties to the extent that such security interests or Mortgages would result in a material adverse tax consequence to Parent or its Restricted Subsidiaries, as reasonably determined by the Lead Borrower and notified in writing to the Agent. All such security interests and Mortgages shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Agent and (subject to exceptions as are reasonably acceptable to the Agent) shall constitute, upon taking all necessary perfection action (which the Loan Parties agree to promptly take) valid and enforceable perfected security interests and Mortgages (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), subject to the Intercreditor Agreement, any Additional Debt Intercreditor Agreement and any Permitted Junior Debt Intercreditor Agreement, superior to and prior to the rights of all third Persons and subject to no other Liens except for Permitted Liens. The Additional Security Documents or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect (subject to exceptions as are reasonably acceptable to the Agent) the Liens in favor of the Agent required to be granted pursuant to the Additional Security Documents and all Taxes, fees and other charges payable in connection therewith shall be paid in full. Notwithstanding any other provision in this

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Agreement or any other Loan Document, no FSHCO or Foreign Subsidiary shall be required to pledge any of its assets to secure any obligations of the Loan Parties under the Loan Documents or guarantee the obligations of the Loan Parties under the Loan Documents.

(b) Subject to the terms of the Intercreditor Agreement, any Additional Debt Intercreditor Agreement and any Permitted Junior Debt Intercreditor Agreement with respect to any person that is or becomes a Restricted Subsidiary after the Closing Date, promptly (i) deliver to the Agent the certificates, if any, representing all (or such lesser amount as is

required) of the Equity Interests of such Restricted Subsidiary directly owned by any Loan Party, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Loan Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Loan Party (to the extent required pursuant to the Security Agreement) and (ii) cause such new Subsidiary (other than an Excluded Subsidiary) (A) to execute a joinder agreement to the Security Agreement, substantially in the form annexed thereto, and (B) to take all actions reasonably necessary or advisable in the opinion of the Agent to cause the Lien created by the applicable Security Document to be duly perfected to the extent required by such agreement in accordance with all applicable requirements of law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Agent.

(c) Parent will, and will cause each of the other Loan Parties to, at the expense of the Lead Borrower, make, execute, endorse, acknowledge, file and/or deliver to the Agent, promptly, upon the reasonable request of the Agent, at the Lead Borrower's expense, any document or instrument supplemental to or confirmatory of the Security Documents, including opinions of counsel, or otherwise deemed by the Agent reasonably necessary for the continued validity, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except for Permitted Liens or as otherwise permitted by the applicable Security Document.

(d) If the Agent reasonably determines that it or the Lenders are required by law or regulation to have appraisals prepared in respect of any Mortgaged Property, the Lead Borrower will, at its own expense, provide to the Agent appraisals which satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of the Financial Institution Reform, Recovery and Enforcement Act of 1989, as amended, and which shall otherwise be in form and substance reasonably satisfactory to the Agent.

(e) Each of Parent and the Borrowers agrees that each action required by clauses (a) through (d) of this Section 9.12 shall be completed as soon as reasonably practicable, but in no event later than 90 days after such action is required to be taken pursuant to such clauses or requested to be taken by the Agent or the Required Lenders (or such longer period as the Agent shall otherwise reasonably agree), as the case may be; provided that in no event will Parent or any of its Restricted Subsidiaries be required to take any action, other than using its commercially reasonable efforts, to obtain consents from third parties with respect to its compliance with this Section 9.12.

9.12 Post-Closing Actions. Parent agrees that it will, or will cause the relevant Loan Parties to, complete each of the actions described on Schedule 9.13 as soon as commercially reasonable and by no later than the date set forth in Schedule 9.13 with respect to such action or such later date as the Agent may reasonably agree. Within 120 days following the Closing Date (or such later date as the Agent shall reasonably agree to), the Lead Borrower shall deliver to the Agent each of the following documents, which shall be reasonably satisfactory in form and substance to the Agent and its counsel, with respect to (x) a Mortgage on the fee interest of B C Systems, Inc., a Delaware corporation, in the real property located in Salinas, California (the "California Property"), (y) a Mortgage on the fee interest of Verdelli Farms, Inc., a

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Pennsylvania corporation in the real property located in Harrisburg, Pennsylvania (the "Pennsylvania Property"), and (z) a Mortgage on the leasehold interest of Fresh Express in the real property located in Morrow, Georgia (the "Georgia Property") and, together with the California Property and the Pennsylvania Property, the "Initial Mortgaged Properties");

(a) Insurance. (i) Policies or certificates of insurance covering each Initial Mortgaged Property, for the benefit of the Agent and the Lender Group, as additional insured and loss payee and mortgagee and otherwise bearing endorsements of the character reasonably acceptable to the Agent confirming coverage required under Section 9.03 and (ii) flood hazard determination search certificates with respect to the Initial Mortgaged Properties;

(b) Mortgages. Fully executed counterparts of Mortgages covering each Initial Mortgaged Property, together with evidence that counterparts of such Mortgages have been delivered to the applicable title company for recording in all places to the extent necessary or, in the reasonable opinion of the Agent, desirable, to effectively create a valid and enforceable first priority mortgage lien on the Initial Mortgaged Properties in favor of the Agent for its benefit and the benefit of the Lender Group (subject to the Intercreditor Agreement), securing the Obligations (provided that in jurisdictions that impose



mortgage recording taxes, such Mortgages shall not secure indebtedness in an amount exceeding 100% of the fair market value of the applicable Initial Mortgaged Property, as reasonably determined, in good faith, by the Lead Borrower and reasonably acceptable to the Agent;

(c) Counsel Opinions. Favorable opinions addressed to the Agent and the Lenders, of (A) local counsel in the jurisdiction where the Initial Mortgaged Properties are located regarding the enforceability and perfection of the Mortgages and, in cases where the applicable Loan Party is organized in the jurisdiction where the Initial Mortgaged Property is located, regarding the valid existence, due authorization, execution and delivery of the applicable Mortgage, and (B) except in instances where such items are addressed in the opinion from local counsel, counsel for the Loan Parties regarding valid existence, due authorization, execution and delivery of the Mortgages, in each case, in form and substance reasonably acceptable to the Agent;

(d) Title Insurance. With respect to each such Mortgage, a fully paid mortgage policy (a “Mortgage Policy”) insuring (or committing to insure) the lien of such Mortgage as a valid and enforceable first priority mortgage or deed of trust lien on the Initial Mortgaged Property described therein (subject to the Intercreditor Agreement), in an amount not less than 100% of the fair market value of such Initial Mortgaged Property as reasonably determined, in good faith, by the Lead Borrower and reasonably acceptable to the Agent issued by the title company, which reasonably assures the Agent that each Mortgage is a valid and enforceable mortgage lien on the applicable Initial Mortgaged Property, free and clear of all defects and encumbrances subject only to the Permitted Liens), and each such Mortgage Policy shall otherwise be in form and substance reasonably satisfactory to the Agent and shall include such title endorsements and other affirmative insurance as the Agent shall reasonably request, to the extent available at commercially reasonable rates (excluding endorsements or coverage related to creditors’ rights); provided, however, that it is understood that such title insurance may include exceptions for matters that would be disclosed by a survey or inspection of the applicable Mortgaged Property;

(e) Required Consents. With respect to each Initial Mortgaged Property, Borrowers shall make commercially reasonable efforts (which shall not include the commencement of litigation or require the payment of any sum of money unless such payment is expressly set forth in the agreement under which consent is sought) to obtain such consents, approvals, amendments, supplements, estoppels, tenant subordination agreements or other instruments, as necessary, in order for the owner or holder of the fee or

leasehold interest constituting such Initial Mortgaged Property to grant the lien contemplated by the applicable Mortgage, including, without limitation, a subordination, non-disturbance and attornment agreement in favor of the Agent with respect to the California Property, executed by Boutonnet Farms, Inc. and BC Systems, in a form substantially similar to the Subordination, Non-Disturbance and Attornment Agreement dated May 22, 2013, executed by Boutonnet Farms, Inc. and BC Systems in favor of the Prior Agent in connection with the Existing Credit Agreement;

(f) Mortgaged Properties indemnification. With respect to the Initial Mortgaged Properties, such affidavits, certificates, instruments of indemnification and other items (including a so-called “gap” indemnification) as shall be reasonably required to induce the title company to issue the applicable Mortgage Policies and endorsements contemplated above;

(g) Collateral Fees and Expenses. Evidence reasonably acceptable to the Agent of payment by Borrowers of all Mortgage Policy premiums, search and examination charges, mortgage filing and recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages, fixture filings and issuance of the Mortgage Policies referred to above; and

(h) Georgia Property Deliverables. With respect to the Georgia Property, (A) a subordination agreement executed by Fresh International Corp. (“Fresh International”) in favor of the Agent, subordinating the interest of Fresh International under the Deed to Secure Debt, Assignment of Rents and Leases and Security Agreement dated April 1, 2004 (the “Bond Mortgage”) made by the Development Authority of Clayton County (the “Clayton County Authority”) in favor of Fresh International and recorded in the Clayton County, Georgia Records at Deed Book 7729, Page 279 to the Lease Agreement dated as of April 1, 2004 (as heretofore amended, the “Georgia Lease”) and to the Mortgage for the Georgia Property, in a

form substantially similar to the Subordination Agreement dated May 22, 2013 executed by Fresh International in favor of the Prior Agent in connection with the Existing Credit Agreement, (B) an assignment of the Bond Mortgage by Fresh International in favor of the Agent, in a form substantially similar to the Assignment of Deed to Secure Debt dated May 22, 2013, made by Fresh International in favor of the Prior Agent in connection with the Existing Credit Agreement and (C) use commercially reasonable efforts to deliver an estoppel certificate and consent to the Mortgage for the Georgia Property executed by the Clayton County Authority, Fresh International and Fresh Express in favor of the Agent, in a form substantially similar to the Estoppel Certificate and Consent dated May 23, 2013, executed by the Development Authority of Clayton County, Fresh International and Fresh Express in favor of the Prior Agent in connection with the Existing Credit Agreement.

### 9.13 Permitted Acquisitions.

(a) Subject to the provisions of this Section 9.14 and the requirements contained in the definition of Permitted Acquisition, Parent and its Restricted Subsidiaries may from time to time after the Closing Date effect Permitted Acquisitions, so long as (in each case except to the extent the Required Lenders otherwise specifically agree in writing in the case of a specific Permitted Acquisition): (i) the Permitted Acquisition Payment Conditions shall be satisfied on a Pro Forma Basis for such Permitted Acquisition; provided that this clause (i) shall not apply to any Permitted Acquisition funded solely by the issuance of Qualified Equity Interests in Parent, and (ii) the Lead Borrower shall have delivered to the Agent and each Lender a certificate executed by its chief financial officer, chief accounting officer or treasurer, certifying to the best of such officer's knowledge, compliance with the requirements of the preceding clause (i).

(b) At the time of each Permitted Acquisition involving the creation or acquisition of a Restricted Subsidiary, or the acquisition of Equity Interests of any Person, the Equity Interests thereof created or acquired

in connection with such Permitted Acquisition, to the extent directly owned by a Loan Party, shall be pledged for the benefit of the Secured Parties pursuant to (and to the extent required by) the Security Agreement; provided that the pledge of the outstanding capital stock of any FSHCO or Foreign Subsidiary directly owned by a Loan Party shall be limited to (x) no more than sixty-five percent (65%) of the total combined voting power for all classes of the voting Equity Interests of such FSHCO or Foreign Subsidiary and (y) one-hundred percent (100%) of the non-voting Equity Interest of such FSHCO or Foreign Subsidiary; provided that for the avoidance of doubt, no FSHCO or Foreign Subsidiary shall be required to pledge any of its assets in connection with any such Permitted Acquisition.

(c) Parent shall cause each Restricted Subsidiary (other than any Excluded Subsidiary) which is formed to effect, or is acquired pursuant to, a Permitted Acquisition to comply with, and to execute and deliver all of the documentation as and to the extent required by, Section 9.12, to the reasonable satisfaction of the Agent.

(d) The consummation of each Permitted Acquisition shall be deemed to be a representation and warranty by the Lead Borrower that the certifications pursuant to this Section 9.14 are true and correct in all material respects and that all conditions thereto have been satisfied and that same is permitted in accordance with the terms of this Agreement, which representation and warranty shall be deemed to be a representation and warranty for all purposes hereunder, including, without limitation, Sections 8 and 11.

9.14 Designation of Subsidiaries. Parent may at any time after the Closing Date designate any Restricted Subsidiary (other than a Borrower) as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary by written notice to the Agent; provided that (i) immediately before and after such designation, no Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Payment Conditions shall be satisfied on a Pro Forma Basis, (iii) in the case of the designation of any Subsidiary as an Unrestricted Subsidiary, such designation shall constitute an Investment in such Unrestricted Subsidiary (calculated as an amount equal to the sum of (x) the net worth of the Subsidiary designated immediately prior to such designation (such net worth to be calculated without regard to any Obligations of such Subsidiary under the Security Agreement) and (y) the aggregate principal amount of any Indebtedness owed by the Subsidiary to Parent or any of its Restricted Subsidiaries immediately prior to such designation, all calculated, except as set forth in the parenthetical to clause (x) above, on a consolidated basis in accordance