

COUNTY COUNCIL OF CECIL COUNTY, MARYLAND
LEGISLATIVE SESSION DAY 2020-11

RESOLUTION NO. 34-2020

Title of Resolution: Loan Endorsement – Maryland Economic Development Assistance and Authority Fund – Smithfield Distribution, LLC.

Synopsis: A Resolution endorsing a Maryland Economic Development Assistance and Authority Fund Loan pursuant to which the Smithfield Distribution, LLC (the “Borrower”) has established a new 420,000 plus square foot facility and acquired the 50-acre (+/-) real property upon which the facility is situated in Principio Business Park in North East, Cecil County, Maryland.

Introduced by: Council President on behalf of the County Executive

Introduced and ordered posted on: June 9, 2020

Scheduled for consideration on: June 16, 2020

By: 
Council Manager

Notice and title of Resolution having been posted by June 9, 2020 at the County Administration Building, 200 Chesapeake Blvd., Elkton and consideration by the Council having been scheduled on June 16, 2020.

By: 
Council Manager

Explanation: CAPITAL LETTERS INDICATE LANGUAGE ADDED TO EXISTING DOCUMENT
~~Strike through~~ indicates language deleted from existing document
Underlining indicates language added to document by amendment.
~~Double Strike through~~ indicates language stricken from document by amendment

**Loan Endorsement – Maryland Economic Development Assistance and Authority Fund –
Smithfield Distribution, LLC**

1 **WHEREAS**, the Department of Commerce of the State of Maryland (the “Department”) has agreed
2 to conditionally loan to Smithfield Distribution, LLC (the “Borrower”) up to \$720,000 from the Maryland
3 Economic Development Assistance and Authority Fund (“MEDAAF”) (the “MEDAAF Loan”); and

4 **WHEREAS**, the MEDAAF Loan proceeds will be loaned to the Borrower toward the establishment of
5 a new 420,000 plus square foot facility and acquisition of the 50-acre (+/-) real property upon which the
6 facility is situated in Principio Business Park in North East, Cecil County, Maryland (the “Project”); and

7 **WHEREAS**, the Project plans call for anticipated project costs at project site of approximately \$16m
8 for land acquisition, \$68M to construct and improve the site, and \$6.6M for equipment, and the Borrower
9 further expects to hire 240 permanent full-time employees at the Project Site by December 31, 2020, and
10 employ at least 240 full-time employees at the Principio Business Park location (the “Project Site”) for the
11 remaining term of the loan; and

12 **WHEREAS**, pursuant to the Maryland Economic Development Assistance Fund Sections 5-301
13 through 5-349 of the Economic Development Article of the Annotated Code of Maryland (the “MEDAAF
14 Statute”), the County Council of Cecil County, Maryland (the “County”) must endorse the making of the
15 MEDAAF Loan for the Project; and

16 **WHEREAS**, as required by the MEDAAF Statute, the County will contribute a separate \$80,000
17 toward the Project in the form of a conditional loan to the Borrower disbursed over a period not to exceed
18 10 years under certain terms and conditions to be reduced to writing by and between the County and the
19 Borrower (the “County Loan”); and

20 **WHEREAS**, the County has determined and expressly finds that it is in the best interest of the
21 citizens of Cecil County that it endorse the making of the MEDAAF Loan for the Project.

22 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CECIL COUNTY, MARYLAND**, that
23 the County hereby fully endorses the making of the MEDAAF Loan for the Project.

24 **AND, BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF CECIL COUNTY, MARYLAND**, that the
25 County hereby approves the County Loan of \$80,000 for the Project, upon terms and conditions to be
26 negotiated by the County Executive.

27 **AND, BE IT FURTHER RESOLVED BY THE COUNTY COUNCIL OF CECIL COUNTY, MARYLAND**, that this
28 Resolution shall be effective upon its adoption in accordance with applicable law.

Loan Endorsement – Maryland Economic Development Assistance and Authority Fund –
Smithfield Distribution, LLC

INTRODUCED: June 9, 2020

ADOPTED: June 16, 2020



President of the Council

ATTEST: 

Council Manager

LOAN AGREEMENT

THIS LOAN AGREEMENT (as it may be amended, this “Agreement”) is made as of this ___ day of _____, 20___, between **SMITHFIELD DISTRIBUTION, LLC**, a Delaware limited liability company (the “Borrower”), and **CECIL COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the “Lender”).

RECITALS

1. The Borrower is indebted to the Lender in the principal amount not to exceed \$80,000, plus interest thereon (the “Loan”), which will be advanced to the Borrower pursuant to this Agreement. The Loan is evidenced by a Promissory Note dated the date hereof in the original principal amount of \$80,000 made by the Borrower and payable to the Lender (as it may be amended or replaced, the “Note”).

2. The Loan was made pursuant to the provisions of the Maryland Economic Development Assistance Authority and Fund (“MEDAAF”), codified as Sections 5-301 through 5-349 of the Economic Development Article, Annotated Code of Maryland (as amended, the “Act”).

3. The Loan proceeds will be used as specifically set forth in this Agreement and generally in connection with the following activities (collectively, the “Project”): (a) the acquisition by Smithfield Strategic Sourcing & Service Co., Inc., an affiliate of the Borrower (“Smithfield Strategic”), of Lot 20 in Principio Business Park, consisting of 67.195 acres (the “Land”) with an address of 2895 Principio Parkway East, North East, Maryland 21901; (b) pursuant to a Distribution and Contribution Agreement effective July 10, 2018, the distribution of the Land by Smithfield Strategic to Smithfield Foods, Inc. (the “Guarantor”), sole stockholder of Smithfield Strategic and sole member of the Borrower, and upon distribution, the contribution of the Land by the Guarantor to the Borrower; (c) the construction by the Borrower of an approximately 420,000 square foot pork processing and distribution facility on the Land (the Land and the facility, collectively the “Facility”), including the acquisition and installation of furniture, fixtures and equipment, (d) the acquisition of the Facility by the Landlord (defined below), (e) pursuant to the Lease, Landlord’s leasing of the Facility to the Borrower, and (f) the Borrower’s operation of pork processing and distribution (the “Business Activities”) at the Facility by the Completion Date (defined below) and thereafter during the term of the Loan.

4. In addition to the Project, the Borrower shall employ Employees (defined below) as provided in this Agreement.

NOW, THEREFORE, in consideration for the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEFINITIONS

All accounting terms not specifically defined herein shall have the meanings determined by generally accepted accounting principles, consistently applied. All terms previously defined are incorporated in this Agreement by reference. Capitalized terms used in this Agreement have the meanings defined below and as otherwise defined in this Agreement:

“Application” means the Application from the Borrower to the Lender dated May 3, 2018, as it may be amended.

“Borrower’s Contribution” means the Landlord’s, Borrower’s and Corporate Guarantor’s provision of at least \$74,600,000 towards the costs of the Project,

“Calculation Date” means each December 31st beginning December 31st 2019 and ending December 31st, 2030.

“Claim” means any action or other claim for liability, loss, expense, or other cost, including fees, costs and expenses of attorneys, consultants, contractors, and experts.

“Completion Date” means January 27, 2020.

“Default” means any default under Article IV of this Agreement.

“Eligible Project Costs” means costs incurred directly by the Borrower specifically for renovation and equipping of the Facility, and not incurred or reimbursed by any other party or entity, including the Local Government. Eligible Project Costs must be approved by the Lender.

“Employees” means employees who (a) are employed by the Borrower at the Facility for at least 1800 hours per year, without a fixed term of employment, (b) are eligible for an employer subsidized health care benefits package, (c) are eligible for similar other benefits as other employees of the Borrower, and (d) make an hourly wage of at least 150% of the prevailing federal minimum wage, as adjusted from time to time. An Employee shall not include (i) an employee of a company acquired by the Borrower after the date hereof, if the employee’s place of employment immediately prior to the acquisition was in the State or (ii) an employee of the Borrower who is transferred to the Facility, if the employee’s place of employment immediately prior to the transfer was in the State.

“Employment Report” means a report prepared by the Borrower that consists of as of the dates required in Section 6.04 below that contains for each Employee (a) an employee identification number or other unique code or unique identifier, (b) the average hours worked, or expected to be worked, for the year, (c) the hourly or annual pay rate, and (d) a general description of available benefits for each listed Employee. An officer of the Borrower shall certify that (i) the list is true and accurate, (ii) the employees listed meet the definition of Employees, and (iii) each

of the employees listed is employed at the Facility. The Employment Report shall be in the form attached hereto as Exhibit E.

“Environmental Requirement” means any current or future Law or other restriction, whether public or private, that in any way pertains to human health, safety or welfare, Hazardous Materials, Hazardous Materials Contamination or the environment (including any Law or restriction dealing with ground, air, water or noise pollution or contamination, and underground or above ground tanks).

“Expenses” means all costs and expenses incurred by the Lender (whether before or after a Default) in connection with, or in exercising or enforcing any rights, powers and remedies provided in, any of the Financing Documents.

“Final Report” means a completed and executed final report in substantially the form of Exhibit B attached to this Agreement.

“Financing Documents” means all documents executed and delivered in connection with the Loan and the Obligations, including this Agreement, the Note, the Guaranty, and any other document, evidencing or securing the Loan, as any of them may be amended.

“Governmental Authority” means the United States, the State, or any of their political subdivisions, agencies, or instrumentalities, including any local authority having jurisdiction over any aspect of the Project.

“Guaranty” means the guaranty agreement executed by the Guarantor, guarantying payment of the Loan, as it may be amended.

“Hazardous Materials” means any hazardous or toxic substances, wastes or materials, including any substance that contains asbestos, radon, polychlorinated biphenyls, urea formaldehyde, explosives, radioactive materials, or petroleum products, that, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a present or potential hazard or nuisance to human health, safety or welfare or to the environment.

“Hazardous Materials Contamination” means the present or future contamination of (a) any part of the Facility, including soil, ground water, and air, by Hazardous Materials, or (b) any part of any other property (including soil, ground water, and air) or improvement as a result of Hazardous Materials emanating from the Facility.

“Hydric Soils” means any soil category upon which building could be prohibited or restricted under any applicable Law, including any restrictions imposed by the Army Corps of Engineers based upon its guidelines concerning soil, vegetation, and effect on the ecosystem.

“Landlord” means Realty Income Trust 2.

“Laws” means any current or future federal, state and local laws, statutes, rules, ordinances, regulations, codes, decisions, interpretations, orders, or decrees of any court or other Governmental Authority having jurisdiction.

“Lease” means Lease Agreement dated as of September 27, 2019, between Landlord and the Borrower covering the Facility.

“Local Contribution” means the provision of at least \$80,000 towards the costs of the Project by the Local Government, which shall be in the form of a loan.

“Local Government” means Cecil County, Maryland, a political subdivision of the State.

“Obligations” means all duties of payment, performance, and completion owed by the Borrower to the Lender under the Financing Documents and by law, including the obligations to:

(a) Pay all sums of money owed in connection with the Loan and any of the Financing Documents, including (i) all sums of principal, interest, and premium, if any, due or to become due, (ii) all past, present, and future advances under any of the Financing Documents, (iii) any late fees or other charges payable by the Borrower, (iv) all money advanced or expended by the Lender as provided for in any of the Financing Documents, and (v) all Expenses; and

(b) Strictly observe and perform all of the provisions of the Financing Documents, time being of the essence.

“State” means the State of Maryland.

“Taxes” means all taxes, water rents, sewer rents, assessments, utility charges (whether public or private), and other governmental or municipal or public dues, charges, and levies.

ARTICLE II **TERMS OF THE LOAN AND DISBURSEMENT**

Section 2.01. The Loan.

Subject to the terms and conditions of all of the Financing Documents, the Lender agrees to extend the Loan to the Borrower.

Section 2.02. Repayment and Interest.

All sums advanced under the Loan shall be evidenced by the Note and shall be repaid with interest in accordance with the provisions of the Note.

Section 2.03. Disbursement.

(a) In General. Subject to the continued compliance by the Borrower with all of the terms of all of the Financing Documents, the continued satisfaction of all conditions precedent to disbursing Loan proceeds under this Agreement, and the continued non-existence of a Default or any event, circumstance, act or omission which with the giving of notice, the passage of time, or both, would constitute a Default, the Lender shall advance to the Borrower the full amount of the Loan pursuant to a completed Request for Disbursement, the form of which is attached hereto as Exhibit A.

(b) Disbursement. The Request for Disbursement shall be made to the Lender at the address specified in Section 5.01, or at any other place that the Lender designates.

(c) Disbursement to the Borrower. The disbursement shall be made directly to the Borrower by check. The Lender shall only disburse Loan proceeds upon presentation by the Borrower of invoices, bills, or other satisfactory proof of payments to reimburse the Borrower for payments made for Eligible Project Costs.

(d) Conditions for Disbursement. The obligation of the Lender to disburse the proceeds of the Loan is subject to the satisfaction of the following conditions as of the date the disbursement is made:

(i) Receipt of Request for Disbursement. The Lender shall have received a completed Request for Disbursement.

(ii) Representations True. No representation or warranty of the Borrower contained in this Agreement shall be or have become materially incorrect or inaccurate.

(iii) No Defaults. There shall be no breach, default, or event of default (including a Default) under the terms of any of the Financing Documents, and no event, circumstance, act, or omission shall exist which with the giving of notice, the passage of time, or both, would constitute breach, default, or event of default (including a Default) under any of the Financing Documents.

(iv) Solvency Certifications. If requested by the Lender, the Borrower shall deliver to the Lender satisfactory evidence that no (1) petition in bankruptcy, voluntary or otherwise, (2) assignment for the benefit of creditors, (3) petition seeking reorganization or arrangement under bankruptcy laws of the United States or of any state, or (4) other action brought under any bankruptcy laws, is pending against the Borrower. The Lender may request such a certification at any time during the Loan term.

(v) No Adverse Change. There has been no materially adverse change in the Borrower’s financial condition from that reflected in the Borrower’s financial statements most recently submitted to the Lender prior to the closing.

(vi) State Contribution. The Borrower shall deliver to the Lender evidence it received the State Contribution.

(vii) Final Report. The Final Report shall be deliver by the Borrower to the Lender

(e) The Borrower’s right to borrow under this Agreement shall terminate 1 months after the date of this Agreement.

(f) Availability of Funds and Reduction of Loan. Disbursements of Loan proceeds are subject to the continuing availability of funds for such purpose, the County’s fiscal position, the Lender’s financial resources, and compliance with all applicable Laws. The Lender may, at any time, assess the County’s fiscal position and the Lender’s financial resources and reduce the amount of undisbursed Loan funds.

Section 2.04. Conditions Precedent to Disbursement.

Before disbursing any Loan proceeds, the Lender shall receive all of the items set forth on the Pre-Closing and Closing Checklist attached hereto as Exhibit C, in form and substance acceptable to the Lender.

ARTICLE III
REPRESENTATIONS, WARRANTIES
AND COVENANTS OF THE BORROWER

Section 3.01. Representations and Warranties.

The Borrower represents and warrants as follows:

- (a) Organization. The Borrower:
 - (i) Is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware;
 - (ii) Has the power to own its property and to carry on its business as now being conducted;

(iii) Is duly qualified to do business and is in good standing in the State and in each jurisdiction in which the character of properties owned by it or the transaction of its business makes qualification necessary; and

(iv) Has delivered a complete copy of its articles of organization and operating agreement, together with all amendments, to the Lender.

(b) Due Authorization. The Borrower has the full power and authority to enter into this Agreement, to borrow the Loan as contemplated by the Financing Documents, to execute and deliver all of the Financing Documents to which it is a party, and to comply with the terms set forth in all of the Financing Documents, all of which have been duly authorized by all necessary membership action of the Borrower. No approval of any other person or public authority or regulatory body is required as a condition to the validity of any of the Financing Documents, or, if required, the approval has been obtained.

(c) Validity of Financing Documents. All of the Financing Documents have been properly executed by the Borrower and will:

(i) Not violate any Laws, or any provision of the Borrower's articles of organization or operating agreement;

(ii) Not violate any provision, or result in a breach, of any document or agreement binding on the Borrower or affecting its property; or

(iii) Constitute the valid and legally binding obligations of the Borrower, fully enforceable against the Borrower, in accordance with their terms.

(d) Legal Actions. There is no (1) Claim pending or, to the best of the Borrower's knowledge, threatened in any court or before any governmental agency, and (2) investigation by or before any Governmental Authority, that:

(i) Questions the validity or enforceability of any of the Financing Documents, or any action taken, or to be taken, under any of them;

(ii) Is likely to result in any material adverse change in the authority, properties, assets, liabilities, or conditions (financial or otherwise) of the Borrower that would materially impair the Borrower's ability to perform any of its obligations under all of the Financing Documents; or

(iii) Affects the Facility or the Project.

(e) Financial Statements. As provided in the Guaranty, the Guarantor's financial information to which the Lender has been given access is complete and correct and fairly and accurately represents the financial condition of the Guarantor as of their date and the results of its operations for the period then ended. There has been no material adverse change in the

financial condition of the Guarantor or the results of its operations since the date of such financial information.

(f) Taxes. All Taxes imposed upon the Borrower and its properties have been paid prior to the date when any interest or penalty would accrue for nonpayment, except for those Taxes being contested in good faith and by appropriate proceedings by the Borrower.

(g) Accuracy of Statements. All information contained in any financial statement, report, or other document given by the Borrower or by any other person in connection with the Loan is true and accurate in all material respects, and the Borrower and each other person has not omitted to state any material fact or any fact necessary to make the information not misleading.

(h) Application. All information in the Application was true and complete in all material respects as of the date of the Application. The Borrower is aware of no event that would require any amendment to the Application in order to make any information in the Application true and complete in all material respects and not misleading in any material respect as of the date of this Agreement, and the Borrower is aware of no event or other fact that should have been, and has not been, reported in the Application as material information.

(i) Financing Document Defaults. There is no event of default or default (including a Default) on the part of the Borrower under any of the Financing Documents, and no event has occurred or is continuing that, with notice, or the passage of time, or both, would constitute an event of default or default (including a Default) under any of the Financing Documents.

(j) Compliance With Laws. The Borrower has complied with all material Laws. The Lender shall determine in its sole discretion the Laws that are material.

(k) State Drug Policy. The Borrower is in material compliance with the State's policy concerning drug and alcohol free workplaces, as set forth in COMAR 01.01.1989.18 and 21.11.08.

(l) Approvals. The Borrower obtained prior to the commencement of construction of the Project:

(i) All approvals from and reviews by all Governmental Authorities of the Laws applicable to the Project and the Facility; and

(ii) All necessary building permits for the Project.

(m) Utilities and Roads. The Facility is serviced by all utility services and roads necessary for the intended operation of the Facility.

(n) Zoning. The intended use of the Facility will not violate any zoning or other Law, or any restrictive covenant or agreement of the Borrower (now in existence or known by the Borrower to be proposed) applicable to the Facility or its use, and all requirements for such use have been satisfied.

(o) Environmental Conditions. To Borrower's knowledge, the Facility, including the land, surface water, ground water on which the Facility is constructed: (i) Is free of any substantial amounts of waste or debris; (ii) Is free of any Hazardous Materials and Hazardous Materials Contamination, except any incidental amounts present in the ordinary course of conducting business and as permitted pursuant to applicable law; (iii) Has never been used as a manufacturing, storage, or dump site for Hazardous Materials; (iv) Is in compliance with all Environmental Requirements; and (v) Contains no Hydric Soils.

(p) Priority Funding Area. To the Borrower's knowledge, the Facility is located in "Priority Funding Area" as that term is defined in Title 5-7B of the State Finance and Procurement Article of the Annotated Code of Maryland.

(q) Borrower's Contribution. The Borrower's Contribution has been expended towards the costs of the Project.

(r) Ownership. The Guarantor owns all of the membership interests of the Borrower directly or indirectly.

(s) State Contribution.

(i) A complete copy of the documents executed in connection with State Contribution has been delivered to the Lender.

(ii) No event, circumstance, act or omission has occurred that with the giving of notice, the passage of time, or both, would constitute a default or an event of default under the documents executed in connection with the State Contribution.

(t) Lease.

(i) A complete copy of the Lease has been delivered to the Lender.

(ii) No event, circumstance, act or omission has occurred that with the giving of notice, the passage of time, or both, would constitute a default or an event of default under the Lease.

(r) Occupancy. The Borrower occupies and began operating Business Activities at the Facility by the Completion Date.

Section 3.02. Borrower's Covenants.

The Borrower covenants as follows:

(a) Repayment and Performance. The Borrower shall promptly pay and perform all of the Obligations in the manner provided in the Financing Documents.

(b) Use of Loan Proceeds. The Borrower shall use the Loan proceeds for Eligible Project Costs.

(c) Financial Information. Upon request of the Lender, the Borrower shall furnish the Lender with:

(i) Access to the Guarantor's financial information in the form previously provided to the Lender as of the date of this Agreement; and

(ii) Any additional information reasonably requested by the Lender.

(d) Good Standing. The Borrower shall maintain its existence as a Delaware limited liability company and its good standing and qualification to do business in the State.

(e) State Drug Policy. The Borrower will comply with the State's policy concerning drug and alcohol free workplaces, as set forth in COMAR 01.01.1989.18 and 21.11.08, for the term of this Agreement.

(h) Maintenance of the Project. The Borrower shall maintain and operate the Facility in conformance with the Lease.

(i) Insurance.

(i) During the term of this Agreement the Borrower shall obtain and maintain, except as provided below, the following insurance coverages:

(1) During any period of construction on the Facility, builder's all-risk insurance of the type customarily carried in the case of similar construction for the full replacement cost of work in place and materials stored in connection with such construction;

(2) Comprehensive general public liability and property damage insurance in amounts usually carried by similar operations against claims for bodily injury, death, or damage to property occurring on the Facility;

(3) "All risk" coverage for the Facility in amounts necessary to prevent the application of any co-insurance provisions up to the full replacement value of the Facility;

(4) Workers' compensation insurance for all contractors and subcontractors employed at the Facility and all employees of the Borrower employed in the State; and

(5) If the Facility is, or is later found to be, in an area that has been identified by the Federal Insurance Administration as having special flood and mudslide hazards, and in which the sale of flood insurance is available under the National Flood Insurance Act of 1968, a flood insurance policy satisfactory to the Lender. If the Facility is not in an area having special flood and mudslide hazards, the Borrower shall deliver to the Lender a certificate or letter issued by its insurance company stating that the Facility is not in a special flood and mudslide hazard area.

(ii) Upon request of the Lender, the Borrower shall file with the Lender a detailed list of the insurance then in effect covering the Facility, stating the names of the insurance companies, the amounts of insurance, dates of the expiration thereof and the properties and risks covered thereby.

(iii) Upon request of the Lender, the Borrower shall cause certificates of insurance, evidencing that the Borrower maintains the insurance required under this subsection, to be delivered annually to the Lender.

(iv) The Borrower shall give the Lender prompt notice of any loss covered by the builders all-risk or the all-risk insurance required under this Agreement.

(j) Notification of Claims. The Borrower shall promptly notify the Lender of any (i) material action or prospective claims or litigation, including tax deficiencies, that may be asserted against the Borrower, and (ii) default or event of default under the terms of any bond, debenture, note, or other evidence of indebtedness of the Borrower.

(k) Access. Any duly authorized representative of the Lender shall, at all reasonable times and reasonable advance notice, have access to all portions of the Facility.

(l) Books and Records. The Borrower shall keep any books, records, and other documents that may be required under the rules and procedures now or hereafter applicable to MEDAAF loans made by the Lender, and as may be reasonably necessary to disclose fully the amount and disposition of the Loan, the total costs incurred to complete the Project, and the source of all funds expended towards the costs of the Project. All books, records and other documents shall be maintained at the offices of the Borrower for inspection, copying, audit and examination at all reasonable times and upon reasonable advance notice by any duly authorized representative of the Lender. All books, records and other documents shall be maintained until the first to occur of (i) three years after completion of the Project, or (ii) the completion of an audit of the Project by the State.

(m) Taxes. The Borrower shall promptly pay all Taxes imposed on the Borrower and its properties prior to the date when any interest or penalty would accrue for non-payment, except for those Taxes being contested in good faith by appropriate proceedings by the Borrower.

(n) Press Releases. Without the prior consent of the Lender, the Borrower may not issue any press releases in connection with the Loan, the County, or the Lender.

(o) Further Assurances. At any time, upon request by the Lender, the Borrower, at its sole expense, will make, execute, and deliver, or cause to be made, executed, and delivered, any additional documents that may, in the opinion of the Lender, be necessary or desirable to effectuate, complete, perfect, continue, or preserve the Obligations. Upon any failure by the Borrower to do so, the Lender may make and execute any such documents in the name of the Borrower, and at the sole expense of the Borrower, and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower to do so after written request by the Lender, this appointment being coupled with an interest. The Lender may, at its option, advance the Expenses incurred in making and executing any such documents and the Borrower shall reimburse the Lender for any sums advanced with interest at a rate equal to 12% per annum. Any such Expenses, together with interest, same shall be part of the Obligations.

(p) Indemnification. The Borrower releases the County and the Lender from, and agrees to protect, indemnify and save each of them harmless against, any Claims and Expenses incurred by, or asserted against, any of them, arising in connection with the Loan, the Project, or the Facility, except to the extent any Claims or Expenses are as a result of the Lender's or the County's gross negligence or willful misconduct. All money expended by the County or the Lender as a result of such Claims and Expenses, together with interest at a rate equal to 12% per annum from the date of payment, shall constitute an additional indebtedness of the Borrower and shall be immediately due and payable by the Borrower to the County and the Lender. Nothing contained in this Section 3.02(p) or in the Financing Documents shall be construed as a limit on the Obligations. This Section 3.02(p) shall survive termination of this Agreement and repayment of the Loan and Note in full.

(q) Contractor's Non-Discrimination/Minority Enterprises.

(i) The Borrower shall not discriminate on the basis of race, color, sex, religion, or national or ethnic origin in its hiring of contractors to carry out any portion of the Project.

(ii) The Borrower agrees to support the State's interest in expanding procurement opportunities for contractors and vendors who are minority business enterprises ("MBE"), as that term is defined in § 14-301 of the State Finance and Procurement Article. The Borrower will designate an individual to identify procurement opportunities in the Project and to work cooperatively with the Department's Minority Business Outreach Office to identify MBEs that have the capacity to provide goods and services for the Project. (Contact the Minority Business Outreach Director at (410) 767-6869, 401 East Pratt Street, Suite 1543, Baltimore, MD 21202.) Before disbursement of the Loan proceeds, the Borrower shall submit to the Lender a list, in the form attached as Exhibit D to this Agreement of the minority businesses from which goods and services were procured, and the nature and dollar amount of goods or services.

(r) Intentionally Deleted.

(s) Expenses. All Expenses incurred by the Lender shall become part of the Obligations and shall be repaid by the Borrower on demand, together with interest at a rate equal to 12% per annum from the date of incurrence.

(t) Compliance With Laws. The Borrower will comply with all material Laws. The Lender shall in its sole discretion determine the Laws that are material.

(u) Amendment of Lease. The Borrower will not amend the Lease to reduce the square footage or the term without the prior written consent of the Lender.

(v) Amendment of Local Contribution Documents. The Borrower shall not amend the documents executed in connection with the State Contribution without the prior written notice to the Lender.

ARTICLE IV **DEFAULT AND REMEDIES**

Section 4.01. Defaults.

The following events shall constitute a Default under this Agreement:

(a) The Borrower fails to pay after 5 days when due the principal amount of the Loan and interest thereon according to the terms of the Note or any other payment required by any of the Financing Documents, including the Obligations;

(b) After the Completion Date, the Borrower ceases to continually use the Facility for Business Activities;

(c) Any Loan proceeds are used for any purpose other than Eligible Project Costs;

(d) The Borrower fails to duly and promptly perform, comply with or observe any of the terms, covenants, conditions or agreements contained in this Agreement, which failure remains uncured for 30 calendar days from the date the Borrower receives notice of the breach from the Lender, provided however, the Borrower shall not receive 30 calendar days to cure under this subsection (d) for (i) the breaches of the covenants, representations and warranties specified in subsection (e) below, or (ii) any other specific Default set forth in this Section;

(e) The Borrower breaches any covenant, representation or warranty in Section 3.01, 3.02 (b), (j), (i), (m), (l), (p), (t), (u), (v) and Article VI of this Agreement.

(f) Any statement made in any certificate, report or opinion (including legal opinions), financial statement, or other document furnished in connection with the Loan was incorrect in any material respect when made;

(g) Any change in any zoning ordinance or any other public restriction is enacted which limits or defines the uses that may be made on any part of the Facility, so that the use of the Facility would be in violation of the restriction or zoning change and the Facility would not be useable for a purpose consistent with the Act;

(h) Any portion of the Borrower's interest in the Facility is leased, subleased, or otherwise similarly conveyed, without the prior written consent of the Lender, provided, however, the Borrower may sublease up to 42,000 square feet of the of the distribution facility without the prior written consent of the Lender;

(i) The Borrower fails to comply with any requirement of any Governmental Authority within 30 days after written notice of the requirement is made or within any other time period set by the Governmental Authority; or if any proceeding is commenced or action taken to enforce any remedy for a violation of any requirement of a Governmental Authority or any restrictive covenant affecting any part of the Facility that is not being contested in good faith by appropriate proceedings;

(j) An uncured default or event of default occurs under the terms of any bond, debenture, note, or other evidence of indebtedness of the Borrower that exceeds \$10,000,000 and remains uncured beyond any applicable grace or cure period;

(k) Final judgment for the payment of money in excess of \$10,000,000 is rendered against the Borrower and is not discharged or a stay of execution thereon or a bond is not procured within 30 days from the date of entry thereof, or if thereafter the judgment remains unsatisfied for a period of 30 days after the termination of any such stay of execution thereon or bond;

(l) Any court of competent jurisdiction makes a final order (i) adjudicating the Borrower a bankrupt, (ii) appointing a trustee or receiver of a substantial part of the property of the Borrower, (iii) approving a petition for, or affecting an arrangement in, bankruptcy, a reorganization pursuant to federal bankruptcy law, or any other judicial modification or alterations of the rights of the Lender or of other creditors of the Borrower, (iv) assuming custody or sequestering any substantial part of the property of the Borrower, or (v) attaching or garnishing any substantial part of the property of the Borrower; or if the Borrower (A) files such petition, or (B) takes or consents to any other actions seeking any such judicial order, or (C) makes an assignment for the benefit of creditors, or (D) fails to pay debts generally as they become due, or (E) makes an admission in writing of inability to pay debts generally as they become due;

(m) A permanent or preliminary injunction is issued that lasts for more than 90 days, that prohibits the Borrower from using the Facility for Business Activities;

(n) Without the prior written consent of the Lender, the Borrower (i) sells or transfers all or substantially all of its business assets, (ii) begins any proceeding to dissolve or liquidate, (iii) changes the form of business entity through which it presently conducts its business, or (iv) merges or consolidates provided however prior written consent is not required if the Borrower is the surviving entity and is of equal or greater credit quality as the Borrower was immediately prior to the merger or consolidation;

(o) Without the prior written consent of the Lender, the Borrower is dissolved by operation of law or in any other manner;

(p) The Lender makes a good faith determination that a material adverse change has occurred in the financial condition of the Borrower from the condition set forth in the most recent financial statement of the Borrower furnished to the Lender, or from the financial condition of the Borrower as most recently disclosed to the Lender in any other manner;

(q) The Lender makes a good faith determination that the prospect of payment of any of the Obligations is impaired for any reason;

(r) The Borrower relocates to an area which is not a Priority Funding Area, as that term is defined in Title 5-7B of the State Finance and Procurement Article of the Annotated Code of Maryland.

(s) A default or event of default occurs under the term of (i) any of the other Financing Documents or (ii) the documents executed in connection with the Local Contribution;

(t) Without the written consent of the Lender, the Guarantor transfers its controlling interest in the Borrower;

(u) If at any time after December 31, 2020, the Borrower fails to employ at least 169 Employees; or

(v) The Borrower defaults under the Lease, or the Lease is terminated.

Section 4.02. Remedies.

(a) Upon the occurrence of any Default, the Lender may:

(i) Require the immediate repayment of the entire outstanding principal indebtedness, together with all accrued interest, under the Note and any Obligations;

(ii) At any time proceed to protect and enforce all rights and remedies available to the Lender under this Agreement or by Law, by any other proceedings, whether for specific performance of any agreement contained in this Agreement, damages, or other relief;

(iii) Suspend or terminate the Borrower's authority to receive any undisbursed Loan proceeds at any time by notice to the Borrower; and

(iv) Exercise any of its rights and remedies under the Guaranty or the other Financing Documents

(b) All remedies provided for in this Agreement or by Law are cumulative and are in addition to any other rights and remedies available to the Lender under any Law. The exercise of any right or remedy by the Lender shall not constitute a cure or waiver of any Default by the Borrower, nor invalidate any act done pursuant to any notice of Default, nor prejudice the Lender in the exercise of those rights.

(c) The failure of the Lender to insist upon performance of any term of this Agreement shall not constitute a waiver of any term of this Agreement. No act of the Lender shall be construed as an election to proceed under any one provision in this Agreement to the exclusion of any other provision.

(d) If the Lender suspends or terminates this Agreement, the rights and remedies available to the Lender shall survive the suspension or termination.

Section 4.03. Setoff.

The Lender may set off against and apply any funds of the Borrower on deposit with, or under the control of, the State to the payment of the Obligations, without notice and without resort to any judicial proceeding.

ARTICLE V
MISCELLANEOUS

Section 5.01. Notices.

(a) All communications between the parties made pursuant to this Agreement shall be in writing.

(b) Any communication shall (a) when mailed, be effective three business days after it is deposited in the mail, and (b) when mailed for next day delivery by a reputable overnight courier service, be effective one business day after mailing. Communications shall be delivered to the office of the addressee, as follows:

(i) Communications to the Lender shall be mailed to:

Department of Economic Development
200 Chesapeake Blvd.

Cecil County, Maryland 21921

Attention: Christopher Moyer, Director or successor Director

With a copy to the County Attorney, 200 Chesapeake Blvd, Elkton,
Maryland 21921.

- (ii) Communications to the Borrower shall be mailed to:

Smithfield Foods, Inc.
200 Commerce Street
Smithfield, VA 23430
Attn: Finance Department

With a copy to:

Smithfield Foods, Inc.
200 Commerce Street
Smithfield, VA 23430
Attn: Joel Weaver, Corporate Counsel

With a copy to:

Smithfield Foods, Inc.
112 Commerce St.
Smithfield, VA 23430
Attn: Bill Dyer, Director of Business Incentives

(c) The Borrower and the Lender may change their notice addresses by sending written notice to the other party.

Section 5.02. Assignment.

No benefit or burden imposed on the Borrower under this Agreement may be assigned without the prior written consent of the Lender unless in compliance with Section 4.01(n).

Section 5.03. Successors Bound.

This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their successors and permitted assigns.

Section 5.04. Severability.

The invalidity of any part of this Agreement shall not affect the validity of the remaining provisions of this Agreement.

Section 5.05. Entire Agreement.

This Agreement constitutes the entire agreement between the Borrower and the Lender and supersedes all prior oral and written agreements, representations, and negotiations between the parties concerning the Loan and the Obligations.

Section 5.06. Amendment of Agreement.

This Agreement may be amended only in writing executed by the Lender and the Borrower.

Section 5.07. Headings.

The headings used in this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 5.08. Disclaimer of Relationships.

The Borrower acknowledges that the obligation of the Lender is limited to making the Loan on the terms set forth in this Agreement. Nothing in this Agreement, and no act of the Lender or the Borrower, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Borrower and the Lender. In addition, by inspecting any part of the Facility or by accepting or approving any action of the Borrower under any of the Financing Documents, the Lender shall not be considered to warrant the condition, legality, or sufficiency of any part of the Facility or any action taken or not taken by the Borrower.

Section 5.09. Governing Law.

This Agreement and all of the other Financing Documents shall be governed by the laws of the State.

Section 5.10. Term of Agreement.

Except as otherwise provided in this Agreement, unless sooner terminated by the mutual consent of the Borrower and the Lender, this Agreement shall remain in full force and effect until the earlier to occur of the date the Loan and the Obligations, together with interest and all other sums due and owing in connection with this Agreement, the Obligations or the Loan, have been paid in full to the satisfaction of the Lender or the Loan and the Obligations are forgiven by the Lender under the provisions of Section 6.02 of this Agreement.

Section 5.11. Illegality.

If performance of any obligation under any of the Financing Documents would require the performing party to violate the Law, then the performance shall be reduced to the level permitted

by Law; and if any provision of this Agreement, operates, or would operate, to invalidate any part of this Agreement, then such provision only shall be void as though not set forth in this Agreement, and the remainder of this Agreement shall remain in full force and effect; provided, however, that if any such invalidated provision pertains to the payment or repayment of interest, all or a portion of the Loan, or any other of the Obligations, then the entire unpaid sum (excluding amounts previously forgiven in accordance with the terms of this Agreement) under this Agreement, with all unpaid interest accrued thereon, and all other unpaid Obligations shall become due and payable on demand.

Section 5.12. WAIVER OF JURY TRIAL.

THE BORROWER HEREBY VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER AND IN CONNECTION WITH THE LOAN OR ANY OF THE FINANCING DOCUMENTS.

Section 5.13. CONFESSION OF JUDGMENT.

Upon a Default, the Borrower authorizes the clerk or any attorney of any court of record to appear for it and enter judgment by confession, without prior notice or opportunity for prior hearing for the principal balance then outstanding under **this Note**, together with interest, court costs, and an attorneys' fees equal to 15% of the sum of the principal balance then outstanding and interest then due hereunder. The Borrower waives and releases, to the extent permitted by law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and extension upon any levy on real estate or personal property to which the Borrower may otherwise be entitled under any current or future law of the United States of America or of any state or possession of the United States of America. The authority to appear for and enter judgment against the Borrower may be exercised on one or more occasions, and shall not be extinguished by any judgment entered pursuant thereto. This authority may be exercised in the same or different jurisdictions, as often as the Lender determines to be necessary or desirable.

Section 5.14. Expenses.

The Borrower shall pay all Expenses in connection with the execution and delivery of any of the Financing Documents.

Section 5.15. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one document.

ARTICLE VI
FORGIVENESS AND EMPLOYMENT REPORTING

Section 6.01. Partial Repayment.

(a) On the first Calculation Date on which the Employer employs fewer than 240 Employees, but employs more than 169 Employees, the Borrower shall repay to the Lender a portion of the Loan equal to \$3,000 for each Employee fewer than 240, together with accrued interest thereon, as provided in the Note.

(b) On each future Calculation Date on which the Employer employs fewer than 240 Employees, but employs more than 169 Employees, the Borrower shall repay to the Lender a portion of the Loan equal to \$3,000 for each Employee fewer than 240, less an amount equal to the amount of the Loan previously repaid to the Lender under this Section, plus accrued interest thereon, as provided in the Note. If the amount resulting from the calculation in the immediately preceding sentence is zero or negative, the Borrower shall not be required to make any payment to the Lender for the Calculation Date; it being expressly understood that nothing in this Section shall be construed to require the Lender to repay any amounts to the Borrower.

(c) The following is an example of the intended operation of the preceding paragraph. If the Borrower employed 245, 236, 252, 225, 240, 220, 230, 225, 255, 263 and 240 Employees as of each of the Calculation Dates, then (1) as of December 31, 2020, the Borrower would not be required to make any payments to the Lender (as the Borrower employed over 240 Employees), (2) as of December 31, 2021, the Borrower would be required to repay \$12,000, plus accrued interest to the Lender ($\$3,000 \times (240 - 236) = \$12,000$), (3) as of December 31, 2022, the Borrower would not be required to make any payments to the Lender (as the Borrower employed over 240 Employees), (4) as of December 31, 2023, the Borrower would be required to repay an additional \$33,000, plus accrued interest to the Lender ($\$3,000 \times (240 - 225) = \$45,000 - \$12,000$ (previously repaid) = \$33,000), (5) as of December 31, 2024, the Borrower would not be required to any payments to the Lender (as the Borrower employed 240 Employees), (6) as of December 31, 2025, the Borrower would be required to repay an additional \$15,000, plus accrued interest to the Lender ($\$3,000 \times (240 - 220) = \$60,000 - \$45,000$ (previously repaid) = \$15,000), (7) as of December 31, 2026, the Borrower would not be required to make any payments as the amount resulting from the calculation is negative ($\$3,000 \times 240 - 230 = \$30,000 - \$60,000$ (previously repaid) = - (\$30,000)), (8) as of December 31, 2027, the Borrower would not be required to make any payments as the amount resulting from the calculation is negative ($\$3,000 \times 240 - 225 = \$45,000 - \$60,000$ (previously repaid) = - (\$15,000)), (9) as of December 31, 2028, the Borrower would not be required to make any payment to the Lender (as the Borrower employed over 240 Employees), (10) as of December 31, 2029, the Borrower would not be required to make any payment to the Lender (as the Borrower employed over 240 Employees) and (11) as of December 31, 2030, the Borrower would not be required to make any payment to the Lender (as the Borrower employed at least 240 Employees).

Section 6.02. Forgiveness.

As of December 31, 2029, the Lender will forgive the amount of the Loan which is not subject to repayment under this Article VI, if no Default exists, and no event, circumstance, act or omission which, with the giving of notice, the passage of time, or both, would constitute a Default.

Determination of amounts to be forgiven shall be made after determining any amounts required to be repaid under this Article VI.

Section 6.03. General Conditions.

(a) All information submitted by the Borrower's to the Lender as evidence of compliance with any requirement of this Article must be in form and substance acceptable to the Lender in its reasonable discretion.

(b) The Lender shall not be obligated to forgive all or any portion of the Loan or permit repayment as provided in this Section if a Default exists, or an event, circumstance, act or omission exists which, with the giving of notice, the passage of time, or both, would constitute a Default.

(c) All calculations of the employment shall be based upon the employment reports received by the Lender under Section 6.04 below.

Section 6.04. Employment Reporting Requirement.

(a) On the dates specified below, the Borrower shall submit an Employment Report (defined below) to the Lender with information effective as of the dates specified below:

<u>Report Date</u>	<u>Effective Date of Information</u>
January 15, 2021	December 31, 2020
January 15, 2022	December 31, 2021
January 15, 2023	December 31, 2022
January 15, 2024	December 31, 2023
January 15, 2025	December 31, 2024
January 15, 2026	December 31, 2025
January 15, 2027	December 31, 2026
January 15, 2028	December 31, 2027
January 15, 2029	December 31, 2028
January 15, 2030	December 31, 2029
January 15, 2031	December 31, 2030

(b) Upon the written request of the Lender, the Borrower shall provide the Lender with any information and reports that the Lender determines, in its reasonable discretion, are needed to verify information contained in an Employment Report. The Borrower shall permit the Lender to inspect the employee records of the Borrower to confirm the information contained in an Employment Report.

[SIGNATURES APPEAR ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the Borrower and the Lender have caused this Agreement to be executed and delivered as of the date first above written.

WITNESS:

CECIL COUNTY, MARYLAND

Name: _____

By: _____ (SEAL)
Alan J. McCarthy
County Executive

WITNESS:

SMITHFIELD DISTRIBUTION, LLC

Name: _____

By: _____ (SEAL)
Name: _____
Title: _____

STATE OF MARYLAND, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this ___ day of _____, 20___, before me, a Notary Public in the State of Maryland, personally appeared Alan J. McCarthy, who acknowledged himself/herself to be the County Executive of Cecil County, Maryland, known or satisfactorily proven to me to be the person whose name is subscribed to this document, and acknowledged that he executed it on behalf of **CECIL COUNTY, MARYLAND** as its duly authorized County Executive.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission expires: _____

STATE OF MARYLAND, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this ___ day of _____, 20___, before me, a Notary Public in the State of Maryland, personally appeared _____, who acknowledged himself/herself to be the _____ of the _____, known or satisfactorily proven to me to be the person whose name is subscribed to this document, and acknowledged that she/he executed it on behalf of the _____, as its duly authorized _____.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission expires: _____

EXHIBIT A
REQUEST FOR DISBURSEMENT

1. Borrower: **SMITHFIELD DISTRIBUTION, LLC**
2. Request No. 1 of 1
- 3.

Activity	Actual Cost (& Contract # if applicable)	Amount Requested from Lender in this Request	Cumulative Amount Requested from Lender to date
TOTAL:			

INSTRUCTIONS:

- (1) Cost figures must be supported by adequate documentation (invoices, bills, vouchers, etc.).

[CERTIFICATION APPEARS ON THE NEXT PAGE.]

CERTIFICATION:

I, _____ of **SMITHFIELD DISTRIBUTION, LLC** (the “Borrower”) hereby certifies to the Department of Commerce (the “Lender”) that:

1. The capitalized terms in this Certification shall have the meanings given to them in the Loan Agreement between the Lender and the Borrower for the \$80,000 loan (the “Agreement”).
2. The attached request is for funds to reimburse the Borrower for Eligible Project Costs. Attached are invoices that evidence the Eligible Project Costs.
3. This request is not for previously requested funds.
4. The conditions to be satisfied prior to the disbursement of Loan proceeds in the Agreement have been met.
5. No default exists under the Financing Documents.
6. The representations and warranties made by the Borrower in the Agreement are true and correct.
7. The Landlord does not own any of the items reimbursed with Loan proceeds and that are evidenced by the attached invoices.

WITNESS:

SMITHFIELD DISTRIBUTION, LLC

Name: _____

By: _____ (SEAL)

Name: _____

Title: _____

Date: _____

EXHIBIT B

Maryland Economic Development Assistance Authority and Fund (“MEDAAF”)
 Final Report and Certification of Completion Costs

1. Borrower: Smithfield Distribution, LLC
2. Period Covered: _____ to _____
3. Activity:

Activities of Project	Costs Paid by Loan	Local Contribution	Corporate Guarantor	Other Source
<u>TOTAL:</u>				

*(Please specify in parenthesis the entity which paid each particular cost.)

[CERTIFICATION APPEARS ON THE NEXT PAGE.]

CERTIFICATION:

I, _____, _____ of Smithfield Distribution, LLC, hereby certify to Cecil County, Maryland (the “Lender”) that: (1) all capitalized terms used in this Certification shall have the meaning given them in the Loan Agreement between the Lender and the Borrower executed in connection with the \$80,000 loan (the “Agreement”), unless otherwise defined herein; (2) the above costs have been incurred for real property acquired, work actually performed and equipment actually acquired and installed in connection with the Project; (3) the information provided above is true and correct; (4) attached is a list of the fixtures, furniture and equipment purchased for and installed at the Facility that has for each item an invoice number, description, cost and payee; and (5) attached are forms G702 and G703 for the construction of the Project at the Facility; (6) attached is the settlement sheet for the acquisition of the land on which the Facility is located; and (7) the Borrower’s Contribution was expended.

WITNESS:

SMITHFIELD DISTRIBUTION, LLC

Name: _____

By: _____ (SEAL)

Name: _____

Title: _____

Date: _____

LOAN AGREEMENT

EXHIBIT C

PRE-CLOSING AND CLOSING CHECKLIST

LOAN AGREEMENT

EXHIBIT D

List of Minority Contractors, Subcontractors, and Vendors Used in Project.

<u>Name and Address of Minority Business Providing Goods or Services</u>	<u>MDOT MBE Certification # or Federal SBA Certification #</u>	<u>Nature of Goods or Services</u>	<u>Dollar Amount</u>
1.			
2.			
3.			
<u>Total Dollar Amount</u>			

LOAN AGREEMENT

EXHIBIT E

EMPLOYMENT REPORT

PROMISSORY NOTE

\$80,000
(Financed Amount)

_____, 20____
_____, Maryland

FOR VALUE RECEIVED, SMITHFIELD DISTRIBUTION, LLC, a Delaware limited liability company (the “Borrower”), promises to pay to the order of **CECIL COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland, (the “Lender”), the principal sum of **EIGHTY THOUSAND DOLLARS (\$80,000)** (the “Loan”), or so much as has been disbursed to the Borrower under the terms of a Loan Agreement of even date herewith between the Borrower and the Lender (the “Loan Agreement”), together with interest thereon at the rate or rates hereafter specified and all other sums that may be payable to the Lender by the Borrower pursuant to this Loan Agreement and this Note (the “Note”). All capitalized terms used in this Note, if not defined in this Note, have the meanings given in the Loan Agreement. The following terms shall apply to this Note.

1. Interest.

(a) Interest Rate. Prior to a Default, as defined in Section 8 below, the unpaid principal balance outstanding pursuant to this Note shall bear interest at the rate of 3% per annum.

(b) Default Rate. Upon the occurrence of a Default, the unpaid principal balance outstanding pursuant to this Note shall bear interest at the rate of 12% per annum.

2. Calculation of Interest. All interest payable under the terms of this Note shall be calculated on the basis of a 360-day year.

3. Repayment.

(a) Deferral. Interest shall accrue on the principal balance of the Loan from the date the Loan proceeds are disbursed to the Borrower. Except for amounts of this Loan that are required to be repaid under the succeeding provisions of this Note, the Borrower’s payment of principal and accrued interest shall be deferred.

(b) December 31, 2020. If as of December 31, 2020, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2021, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(c) December 31, 2021. If as of December 31, 2021, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2022, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(d) December 31, 2022. If as of December 31, 2022, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2023, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(e) December 31, 2023. If as of December 31, 2023, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2024, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(f) December 31, 2024. If as of December 31, 2024, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2025, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(g) December 31, 2025. If as of December 31, 2025, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2026, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(h) December 31, 2026. If as of December 31, 2026, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2027, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(i) December 31, 2027. If as of December 31, 2027, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2028, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(j) December 31, 2028. If as of December 31, 2028, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2029, the Borrower shall make the required repayment of principal, together with accrued interest on that

portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(k) December 31, 2029. If as of December 31, 2029, the Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2030, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(l) December 31, 2030. If as of December 31, 2030:

(i) The Borrower is required to repay any portion of the Loan under Article VI of the Loan Agreement, on April 1, 2031, the Borrower shall make the required repayment of principal, together with accrued interest on that portion of the Loan from the date of disbursement of the Loan proceeds through the date of repayment.

(ii) There remains any outstanding principal balance of the Loan, after determining whether any repayment is required under subsection (l)(i) above and, the Lender will forgive the outstanding principal balance of the Loan and accrued interest as provided in Section 6.02 of the Loan Agreement.

(m) This Note may be subject to multiple maturity dates. The date on which any payment of principal under this Note is due under the terms above shall be a "Maturity Date". On a Maturity Date, the Borrower shall pay any remaining principal balance that is subject to repayment, related accrued and unpaid interest and any other amounts outstanding under the Financing Documents that are related to the portion of principal which is due.

(n) The Lender shall have no obligation to defer any amounts due under this Note or to forgive any amounts if the Borrower is in Default (beyond any applicable notice and cure periods) under the terms of this Note or the Agreement.

4. Late Payment Charge. If any payment due hereunder is not received by the Lender within 15 calendar days after its due date, the Lender may require the Borrower to pay a late payment charge equal to five percent of the amount then due.

5. Application of Payments. All payments made pursuant to this Note shall be applied first to accrued interest, then to principal, and then to late payments, charges or other sums owed to the Lender, or in any other manner that the Lender, in its sole discretion, may determine.

6. Prepayment. The Borrower may prepay all or part of this Note at any time without premium or penalty. The Lender shall apply any voluntary prepayment first to late charges and fees, then to accrued interest and default interest, and then to principal in the inverse order of scheduled maturities.

7. Place of Payment. All payments due under this Note, and all prepayments, shall be made to the **Cecil County Department of Finance, 200 Chesapeake Blvd., Elkton,**

Maryland 21921, Attention: Director of Finance, or to any other place that the Lender may designate in writing, and shall be made in immediately available funds in a manner acceptable to the Lender.

8. Default. The occurrence of any of the following events shall constitute a default (a “Default”) under the terms of this Note:

(a) The failure of the Borrower to pay the Lender when due any amounts payable by the Borrower to the Lender under the terms of this Note; or

(b) The occurrence of a default under the terms of the Loan Agreement or any of the other Financing Documents (as defined in the Loan Agreement), which default remains uncured beyond any applicable grace or cure period.

9. Acceleration. Upon a Default, the Lender, in its sole discretion and without further notice or demand, may declare the entire unpaid principal balance of this Note plus accrued interest and all other sums due under this Note to be immediately due and payable and may exercise any rights and remedies available under any of the Financing Documents.

10. Confession of Judgment. Upon a Default, the Borrower authorizes the clerk or any attorney of any court of record to appear for it and enter judgment by confession, without prior notice or opportunity for prior hearing for the principal balance then outstanding under this Note, together with interest, court costs, and an attorneys’ fees equal to 15% of the sum of the principal balance then outstanding and interest then due hereunder. The Borrower waives and releases, to the extent permitted by law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and extension upon any levy on real estate or personal property to which the Borrower may otherwise be entitled under any current or future law of the United States of America or of any state or possession of the United States of America. The authority to appear for and enter judgment against the Borrower may be exercised on one or more occasions, and shall not be extinguished by any judgment entered pursuant thereto. This authority may be exercised in the same or different jurisdictions, as often as the Lender determines to be necessary or desirable.

11. Consent to Jurisdiction. The Borrower irrevocably submits to the jurisdiction of any state or federal court sitting in the State of Maryland over any proceeding arising out of, or relating to, this Note. The Borrower irrevocably waives, to the fullest extent permitted by law, any objection that the Borrower may now or hereafter have to the setting of venue of any proceeding brought in any such court and any claim that any proceeding brought in any such court was brought in an inconvenient forum.

12. Service of Process. The Borrower hereby consents to process being served in any proceeding instituted in connection with this Note by (i) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to the Borrower at the address listed in Section 5.01 of the Loan Agreement and (ii) serving a copy thereof upon Joel Weaver, Corporate Counsel, 200 Commerce Street, Smithfield, Virginia 23430, the agent designated by the

Borrower as its agent for service of process. The Borrower irrevocably agrees that the service specified herein shall be deemed to be service of process upon the Borrower in any proceeding. Nothing in this Note shall affect the Lender's right to serve process in any other manner permitted by law.

13. Notices. Any notice or other communication to the Borrower or the Lender shall be deemed properly given when delivered in accordance with Section 5.01 of the Loan Agreement.

14. Expenses of Collection. If this Note is referred to an attorney for collection after a Default, the Borrower shall pay all costs of collection, including actual attorneys' fees.

15. Subsequent Holder. The Lender may pledge, transfer, or assign this Note and its rights under the Financing Documents. Any pledge, transfer, or assignment of rights shall also apply to any renewals, extensions or modifications. A transferee, pledgee, or assignee shall have the same rights as the Lender hereunder with respect to this Note.

16. Waiver of Protest. The Borrower, and all parties to this Note, whether maker, endorser, or guarantor waive presentment, notice of dishonor and protest.

17. Choice of Law; Modifications; Cumulative Rights; Extensions of Maturity.

(a) The Borrower acknowledges that the Lender is a body corporate and politic of the State of Maryland, that final credit decisions with respect to the making of the Loan are made in Maryland and, that those credit decisions assume that the substantive laws of Maryland apply. Therefore, the Borrower agrees that this Note shall be governed by the laws of the State of Maryland.

(b) No modification or amendment of this Note shall be effective unless in writing signed by the Lender and the Borrower, and any modification or amendment shall apply only with respect to the specific instance involved.

(c) No waiver of any provision of this Note shall be effective unless in writing signed by the Lender. Any waiver shall apply only with respect to the specific instance involved.

(d) By accepting partial payment of any amount due and payable under this Note, the Lender does not waive the right either to require prompt payment when due of all other amounts due and payable under this Note or to exercise any rights and remedies available to it in order to collect all other amounts due and payable under this Note.

(e) Each right, power, and remedy of the Lender under this Note or under law shall be cumulative and concurrent, and the exercise of any one of them shall not preclude the simultaneous or later exercise by the Lender of any other.

(f) No failure or delay by the Lender to insist upon the strict performance of any provision of this Note or to exercise any right, power, or remedy consequent upon a breach thereof shall constitute a waiver thereof, or preclude the Lender from exercising any such right, power, or remedy.

18. Illegality. If any provision of this Note is found to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if the invalid, illegal, or unenforceable provision had never been part of this Note, but only to the extent it is invalid, illegal, or unenforceable.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned executes this Note under seal as Borrower as of the date written at the beginning of this Note.

[Signature Page Follows]

ATTEST:

BORROWER:

SMITHFIELD DISTRIBUTION, LLC

Name: _____

By: _____ (SEAL)
Name: _____
Title: _____

STATE OF MARYLAND, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this ___ day of _____, 20___, before me, a Notary Public in the State of Maryland, personally appeared _____, who acknowledged himself/herself to be the _____ of the _____, known or satisfactorily proven to me to be the person whose name is subscribed to this document, and acknowledged that she/he executed it on behalf of the _____, as its duly authorized _____.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission expires: _____

CORPORATE GUARANTY AGREEMENT

THIS CORPORATE GUARANTY AGREEMENT (this “Agreement”) is made this ___ day of _____, 20___, to **CECIL COUNTY, MARYLAND**, a body corporate principal department of the State of Maryland (the “Lender”), by **SMITHFIELD FOODS, INC.**, a Virginia corporation (the “Guarantor”).

RECITALS

1. The Lender intends to make a loan to Smithfield Distribution, LLC, a Delaware limited liability company and a wholly-owned subsidiary of the Guarantor (the “Borrower”), in the original principal amount of \$80,000 (the “Loan”).

2. The Loan is evidenced by a promissory note in the principal amount of the Loan, made by Borrower and payable to the Lender (as it may be amended, the “Note”), and is subject to the terms of a Loan Agreement between the Borrower and the Lender (as it may be amended, the “Loan Agreement”).

3. As a material condition for the Lender to make the Loan, the Lender has required that the Guarantor guaranty payment of the Loan as provided in this Agreement.

For other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

1. Guaranty.

(a) The Guarantor hereby absolutely, irrevocably and unconditionally, guarantees to the Lender:

(i) The full and punctual payment when due (whether at stated maturity, upon acceleration, or otherwise) of all present and future indebtedness and obligations of the Borrower to the Lender, whether direct or indirect, absolute or contingent, joint or several, including all obligations arising out of the Loan Agreement and the other Financing Documents (as defined below) and the “Obligations” as defined in the Loan Agreement; and

(ii) The due and punctual performance of all of the other terms of the Loan Agreement and the other Financing Documents (all indebtedness and obligations referred to in clauses (i) and (ii) above are collectively the “Guarantor’s Obligations”).

(b) The term “Financing Documents” means this Agreement, the Loan Agreement, the Note, and any other document or agreement executed or delivered by the Borrower, the Guarantor, or any other person in connection with the Guarantor’s Obligations, as amended.

2. Absolute Guaranty. The guaranty of the Guarantor under this Agreement is a guaranty of payment and not of collection and shall remain in effect until all of the Guarantor’s

Obligations are indefeasibly paid in full. The Guarantor's Obligations are the primary, direct, and immediate obligations of the Guarantor and shall not be affected by, subject to, or conditioned upon, and may be enforced against the Guarantor irrespective of:

(a) Any pursuit, enforcement, or exhaustion of any rights or remedies the Lender may have to collect any of the Guarantor's Obligations from the Borrower or from any other maker, endorser, surety or guarantor of, or pledgor of collateral for, any part of the Guarantor's Obligations (each other maker, endorser, surety, guarantor or pledgor being an "Obligor" and collectively "Obligors"), or any recourse to or against any collateral for any part of the Guarantor's Obligations;

(b) The invalidity, lack of priority, or unenforceability in whole or in part of any the Financing Documents;

(c) Any counter-claim, recoupment, setoff, reduction or defense based on any claim the Guarantor may have against the Lender, the Borrower, or any Obligor;

(d) The voluntary or involuntary liquidation, dissolution, termination, merger, sale, or other disposition of the Borrower or any of the Borrower's assets;

(e) Any bankruptcy, reorganization, insolvency, or similar proceedings for the relief of debtors under any federal or state law by or against the Borrower or any Obligor, or any discharge, limitation, modification, or release of liability of the Borrower or any Obligor arising out of any such proceedings;

(f) Any event or matter to which the Guarantor has consented pursuant to under the terms of this Agreement; and

(g) Any other circumstance that might otherwise constitute a legal or equitable discharge, release or defense of a guarantor (other than the Guarantor) or surety, whether similar or dissimilar to the foregoing.

3. Consents. Without notice to, or further consent of, the Guarantor, the Guarantor hereby consents that the Lender may at any time:

(a) Renew, extend, accelerate, subordinate, or change any of the terms the Guarantor's Obligations;

(b) Waive, release, amend, or otherwise deal with any of the provisions of the Financing Documents in any manner satisfactory to the Lender;

(c) Release the Borrower or any of the Obligors;

(d) Waive, omit, or delay the exercise of any of its rights and remedies against the Borrower or any of the Obligors or any collateral for any part of the Guarantor's Obligations;

(e) Release, substitute, subordinate, add, or fail to maintain, preserve, or perfect any of its liens on, security interests in, or rights to, or otherwise deal in any manner satisfactory to the Lender with any collateral for any part of the Guarantor's Obligations;

(f) Apply any payments of any of the Guarantor's Obligations received from the Borrower, the Guarantor, any Obligor, or any other source to the Guarantor's Obligations in any order and manner as the Lender, in its sole and absolute discretion, may determine; or

(g) Take or omit to take any other action that may to any extent vary the risk of the Guarantor or otherwise operate as a legal or equitable discharge, release, or defense of the Guarantor under applicable laws.

4. Waivers. The Guarantor hereby waives:

(a) Notice of the execution and delivery of any of the Financing Documents;

(b) Notice of the creation of any of the Guarantor's Obligations;

(c) Notice of the Lender's acceptance of and reliance on this Agreement;

(d) Presentment and demand for payment of the Guarantor's Obligations and notice of non-payment and protest of non-payment of the Guarantor's Obligations;

(e) Any notice from the Lender of the financial condition of the Borrower, regardless of the Lender's knowledge thereof;

(f) Demand for observance, performance, or enforcement of, or notice of default under, any of the provisions of the Financing Documents, and all other demands and notices otherwise required by law that the Guarantor may lawfully waive, except for any notice expressly provided for in this Agreement;

(g) Any right or claim to cause a marshaling of the assets of the Borrower or any Obligor;

(h) Any rights of the Guarantor to subrogation, recourse, reimbursement, or indemnity against the Borrower, any Obligor, or any collateral for any of the Guarantor's Obligations and any other rights that may accrue on account of any payments made by the Guarantor to the Lender under this Agreement;

(i) Any defense to the Guarantor's Obligations based on any failure by the Lender to preserve, adequately maintain, or perfect its interest in any collateral for any of the Guarantor's Obligations provided by the Borrower, or on any act or failure to act by the Lender that constitutes a release of or impairs or affects the value of any collateral; and

(j) Any defense based on the adequacy or value of the consideration for this Agreement.

5. Representations and Warranties. The Guarantor hereby represents and warrants to the Lender that:

(a) Organization. The Guarantor: (i) Is a corporation duly organized, validly existing, and in good standing under the laws of the State of Virginia; (ii) Has the power to own its property and to carry on its business as now being conducted; (iii) Is duly qualified to do business and is in good standing in each jurisdiction in which the character of properties owned by it or the transaction of its business makes qualification necessary; and (iv) Has delivered a complete copy of its articles of incorporation and by-laws, together with all amendments, to the Lender.

(b) Due Authorization. The Guarantor has the full power and authority to enter into and comply with all of the terms of this Agreement, and the execution of this Agreement has been duly authorized by all necessary corporate action of the Guarantor. No approval of any other person, public authority, or regulatory body is required as a condition to the validity of this Agreement, or, if required, the approval has been obtained.

(c) Validity of Agreement. This Agreement has been properly executed by the Guarantor and will: (i) Not violate any law, any order of any court or agency of government, or any provision of the Guarantor's articles of incorporation or by-laws; (ii) Not violate any provision, or result in a breach, of any agreement binding on the Guarantor or affecting its property; and (iii) Constitute the valid and legally binding obligation of the Guarantor, fully enforceable against the Guarantor in accordance with its terms.

(d) Legal Actions. There is no controversy or litigation of any nature now pending or, to the best of the Guarantor's knowledge, threatened in any court or before any governmental agency which: (i) Questions the validity or enforceability of this Agreement, or any action taken, or to be taken, under it; or (ii) Is likely to result in any material adverse change in the authority, assets, liabilities, or conditions (financial or otherwise) of the Guarantor that would materially impair the Guarantor's ability to perform any of the Guarantor's Obligations.

(e) Review of Financing Documents. The Guarantor has received and reviewed copies of the Financing Documents.

(f) Ownership of the Borrower. The Guarantor directly or indirectly owns all of the membership interests of the Borrower, and will therefore financially benefit from the Loan to the Borrower, and the Guarantor has determined that the execution and delivery of this Agreement is in its best interests, to its direct benefit and advantage, and in furtherance of its duly authorized corporate purposes and objectives.

(g) Guarantor's Financial Statements. The Guarantor's financial information, to which Lender has been given access, is complete and correct and fairly and

accurately represents the financial condition of the Guarantor as of their date and the results of its operations for the period then ended. There has been no material adverse change in the financial condition of the Guarantor or the results of its operations since the date of such financial information.

(h) Taxes. All taxes imposed upon the Guarantor and its properties have been paid prior to the date when any interest or penalty would accrue for nonpayment, except for those taxes being contested in good faith and by appropriate proceedings by the Guarantor.

(i) Accuracy of Statements. All information contained in any financial statement, report, or other document given by the Guarantor or by any other person in connection with the Loan is true and accurate in all respects, and the Guarantor and each other person has not omitted to state any material fact or any fact necessary to make the information not misleading.

(j) Agreement Default. There is no Default on the part of the Guarantor under this Agreement, and no event has occurred or is continuing that, with notice, or the passage of time, or both, would constitute a Default under this Agreement.

(k) Compliance With Laws. The Guarantor has complied with all laws and orders of any courts or agencies of government.

6. Covenants.

(a) Upon request of the Lender, the Guarantor shall furnish the Lender with access to Guarantor's reasonable financial information in the form previously provided to Lender provided that if the Guarantor is no longer providing information in the form and content as the same type previously provided to Lender, the Guarantor shall furnish the Lender with a copy of the Guarantor's financial statement in reasonable detail satisfactory to the Lender, prepared in accordance with generally accepted accounting principles, consistently applied, and audited by an independent, certified public accountant, which financial statement shall include a consolidated and consolidating balance sheet of the Guarantor as of the end of such fiscal year, and a consolidated and consolidating statement of earnings and surplus for such fiscal year; and

(b) Taxes. The Guarantor shall promptly pay all taxes imposed on the Guarantor and its properties prior to the date when any interest or penalty would accrue for non-payment, except for those taxes being contested in good faith by appropriate proceedings by the Guarantor.

(c) Interest in the Borrower. The Guarantor shall not dispose of any of its interest in the Borrower.

(d) Compliance With Laws. The Guarantor will comply with all material laws and all orders of any courts or agencies of government. The Lender shall determine in its sole discretion the materiality of laws.

7. Default. The following events shall constitute a default under the terms of this Agreement (collectively or individually, a "Default"):

(a) The failure of the Guarantor promptly to pay and perform any part of the Guarantor's Obligations;

(b) Any representation or warranty made in this Agreement or any financial statement or other information furnished by the Guarantor in connection with the Loan proves to have been false or misleading in any material respect on the date made or furnished;

(c) The failure of the Guarantor to comply with any covenant set forth in this Agreement;

(d) The occurrence of a default under the terms of the Loan Agreement or any of the other Financing Documents, which is not cured within any applicable grace or cure period;

(e) Any court of competent jurisdiction makes a final order (i) adjudicating the Guarantor a bankrupt, (ii) appointing a trustee or receiver over a substantial part of the property of the Guarantor, (iii) approving a petition for, or affecting an arrangement in, bankruptcy, a reorganization pursuant to federal bankruptcy law, or any other judicial modification or alterations of the rights of the Lender or of other creditors of the Guarantor, (iv) assuming custody or sequestering any substantial part of the property of the Guarantor, or (v) attaching or garnishing any substantial part of the property of the Guarantor; or if the Guarantor (A) files such petition, or (B) takes or consents to any other actions seeking any such judicial order, or (C) makes an assignment for the benefit of creditors, or (D) fails to pay debts generally as they become due, or (E) makes an admission in writing of inability to pay debts generally as they become due;

(f) Without the prior written consent of the Lender, the Guarantor is dissolved by operation of law or in any other manner;

(g) Without the prior written consent of the Lender, the Guarantor (i) sells or transfers all or substantially all of its business assets, (ii) begins any proceeding to dissolve or liquidate, or (iii) merges or consolidates unless the Guarantor is the surviving entity and is of equal or greater credit quality of the Guarantor immediately prior to the merger or consolidation;

(h) A default or event of default occurs under the terms of any bond, debenture, note, or other evidence of indebtedness that is greater than \$50,000,000 of the Guarantor and remains uncured beyond any applicable grace or cure period;

(i) Final judgment for the payment of money in excess of \$50,000,000 is rendered against the Guarantor and is not discharged or a stay of execution thereon or a bond is not procured within 30 days from the date of entry thereof, or if thereafter the judgment remains unsatisfied for a period of 30 days after the termination of any such stay of execution thereon or bond; or

(j) The Lender makes a good faith determination that a material adverse change has occurred in the financial condition of the Guarantor from the condition set forth in the

most recent financial statement of the Guarantor furnished to the Lender, or from the financial condition of the Guarantor as most recently disclosed to the Lender in any other manner;

8. Rights and Remedies.

(a) Upon the occurrence of any Default, an amount equal to the total of the Guarantor's Obligations (whether matured or unmatured and regardless of whether any portion of the Guarantor's Obligations are then due and payable by the Borrower or any Obligor) shall immediately and automatically be due and payable by the Guarantor to the Lender without further action by, or notice from, the Lender unless expressly provided for in this Agreement.

(b) Upon the occurrence of a Default, the Lender may exercise any of its rights and remedies under this Agreement or law to enforce and collect the Guarantor's Obligations. All rights and remedies shall be cumulative and enforceable alternatively, successively, or concurrently.

(c) The Guarantor shall pay to the Lender on demand the amount of any costs and expenses, including court costs and reasonable attorneys' fees and expenses paid or incurred by or on behalf of the Lender in exercising any of its rights and remedies, together with interest thereon from the date due until paid in full at the rate of **10%** per annum.

(d) Each Default shall give rise to a separate cause of action, and separate actions may be brought under this Agreement as each cause of action arises. No failure or delay by the Lender to require strict performance by the Guarantor of any of the Guarantor's Obligations or to exercise any of its powers, rights, or remedies under this Agreement or applicable laws shall operate as a waiver thereof or preclude the Lender at any later time from demanding strict performance thereof or exercising any such powers, rights or remedies. No conduct, custom, or course of dealing shall be effective to waive, amend, or release this Agreement. No modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by the Lender, and any waiver shall be effective only in the specific instance and for the specific purpose for which it is given.

9. Confessed Judgment. Upon a Default, the Guarantor authorizes the clerk or any attorney of any court of record to appear for it and enter judgment by confession without prior notice or opportunity for prior hearing for the Guarantor's obligations then outstanding, together with interest, court costs and attorneys' fees equal to 15% of the sum of the Guarantor's obligations then outstanding. The Guarantor waives and releases, to the extent permitted by law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and extension upon any levy on real estate or personal property to which the Guarantor may otherwise be entitled under any law. The authority to appear for and enter judgment against the Guarantor may be exercised on one or more occasions, and shall not be extinguished by any judgment entered pursuant thereto. This authority may be exercised in the same or different jurisdictions, as often as the lender determines to be necessary or desirable.

10. Notices.

(a) Any communication shall (i) when mailed, be effective three business days after it is deposited in the mails, (ii) when mailed for next day delivery by a reputable overnight courier service, be effective one business day after mailing, and (iii) when sent by fax, be effective when it is faxed and receipt of the communication is confirmed. Communications shall be delivered to the office of the addressee, as follows:

If to the Lender:

Cecil County, Maryland
200 Chesapeake Blvd.
Elkton, Maryland 21921
Attention: Director, Department of Finance

With a copy to the Lender's counsel at the following address:

County Attorney
Cecil County, Maryland
200 Chesapeake Blvd.
Elkton, Maryland 21921

If to the Guarantor:

Smithfield Foods, Inc.
200 Commerce Street
Smithfield, VA 23430
Attn: Finance Department

With a copy to:

Smithfield Foods, Inc.
200 Commerce Street
Smithfield, VA 23430
Attn: Joel Weaver, Corporate Counsel

With a copy to:

Smithfield Foods, Inc.
112 Commerce St.
Smithfield, VA 23430
Attn: Bill Dyer, Director of Business Incentives

(b) The Lender or the Guarantor may change their respective address specified in (a) above by sending written notice to the other party.

11. Consent to Jurisdiction. The Guarantor irrevocably:

(a) Consents to the jurisdiction and venue of any state or federal court sitting in the State of Maryland over any action related to this Agreement or any of the Financing Documents;

(b) Waives, to the fullest extent permitted by law, any objection that the Guarantor may have to the venue of any action, or that any action has been brought in an inconvenient forum; and

(c) Consents to the service of process in any action by the mailing of copies of the process to the Guarantor by certified or registered mail at the Guarantor's address set forth for the purpose of giving notice.

12. Waiver of Jury Trial. The Guarantor waives any right it may have to a trial by jury in any action, proceeding, or litigation directly or indirectly arising out of, under and in connection with the Loan or this Agreement.

13. Continuing Agreement.

(a) This Agreement shall continue and shall bind the Guarantor, and all representations, warranties, covenants, and obligations of the Guarantor in this Agreement shall remain in effect, until all Guarantor's Obligations have been indefeasibly paid in full.

(b) If no longer in effect, this Agreement shall be reinstated if at any time: (i) any part of a payment of any of the Guarantor's Obligations is rescinded or must be returned by the Lender upon the insolvency, bankruptcy, receivership, dissolution, liquidation or reorganization of the Borrower, the Guarantor, or any Obligor, or as a result of the appointment of a receiver, trustee, or similar officer for the Borrower, the Guarantor, or any Obligor or any substantial part of their property, all as though the payment had not been made and regardless of whether the payment is returned to the party who originally made it or to some other party.

(c) Upon payment by the Guarantor to the Lender of any part of the Guarantor's Obligations, any present or future right of the Guarantor against the Borrower or any Obligor with respect to such payment arising by way of subrogation, reimbursement, indemnity, or otherwise shall be subordinate to the prior indefeasible payment in full of the Guarantor's Obligations.

14. Subordination of Debt.

(a) Upon a Default, the Guarantor hereby subordinates the payment of principal, interest, and any other amounts due on any current or future indebtedness owed by the Borrower to the Guarantor (the "Company Debt") to the prior payment in full of the Guarantor's Obligations and agrees that all of the right and interest of the Guarantor in the Company Debt shall at all times be subordinate to the right and interest of the Lender in the Guarantor's Obligations.

(b) Upon a Default, the Guarantor will not demand or accept, and the Borrower will not offer or make, directly or indirectly, by setoff, redemption, or otherwise, any

payment on any part of the Company Debt until the full amount of the Guarantor's Obligations has been received by the Lender in cash.

(c) Any payment of Company Debt received by the Guarantor that is prohibited under this Agreement shall be held by the Guarantor in trust for the Lender. If the Guarantor fails to endorse any such payment where necessary or appropriate, the Guarantor hereby irrevocably appoints the Lender as attorney-in-fact for the Guarantor, with full power to make any such endorsement and with full power of substitution.

(d) Until the full amount of the Guarantor's Obligations has been received in cash by the Lender, the Guarantor, without the prior written consent of the Lender, will not (i) accelerate the maturity of any of the Company Debt other than in the ordinary course of business operations, (ii) exercise any rights or remedies or take any action to collect or enforce any of the Company Debt other than in the ordinary course of business operations, (iii) join with any other creditors of the Borrower in filing any petition commencing any action described in Section 7(e) against or in respect of the Borrower, (iv) sell, assign, transfer, or otherwise dispose of any part of the Company Debt, (v) amend or modify any instrument or agreement evidencing, creating, or executed in connection with any part of the Company Debt other than in the ordinary course of business operations, or (vi) create additional Company Debt other than in the ordinary course of business operations.

(e) The Guarantor shall maintain proper books and records concerning the Company Debt and shall permit the Lender to inspect and photocopy those books and records or any instrument evidencing or creating any of the Company Debt.

15. Miscellaneous.

(a) All amounts payable by the Guarantor under this Agreement to the Lender shall be paid in immediately available funds in a manner acceptable to the Lender at the Lender's address set forth in Section 10 above, or to any other place as the Lender or other holder of this Agreement may designate.

(b) The Lender may, without notice to, or consent of, the Guarantor, transfer any part of the Guarantor's Obligations, and this Agreement will inure to the benefit of the Lender's transferee; provided, that the Lender shall continue to have the unimpaired right to enforce this Agreement as to that part of the Guarantor's Obligations the Lender has not transferred. In connection with any transfer or the grant by the Lender of any participation in any part of the Guarantor's Obligations, the Lender may divulge to any potential or actual transferee or participant any information or documents furnished in connection with this Agreement.

(c) The invalidity, illegality, or unenforceability of any provision of this Agreement shall not affect the validity, legality, or enforceability of any other provisions of this Agreement.

(d) This Agreement and the rights and obligations of the parties under it shall be construed and interpreted in accordance with the laws of the State of Maryland.

(e) Time is of the essence in connection with the Guarantor's Obligations.

(f) Section headings in this Agreement are included for convenience of reference only, and do not affect the meaning of any of the provisions of this Agreement.

(g) This Agreement shall be binding upon the Guarantor and the Guarantor's successors and assigns, and shall inure to the benefit of the Lender and its successors and assigns.

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty Agreement under the Guarantor's seal as of the day and year first written above, by its officers thereunto duly authorized and empowered.

WITNESS:

GUARANTOR:
SMITHFIELD FOODS, INC.

Name: _____

By: _____ (SEAL)
Name: _____
Title: _____

STATE OF MARYLAND, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this ___ day of _____, 20___, before me, the subscriber, a Notary Public of the State and City/County aforesaid, personally appeared _____, who acknowledged himself/herself to be _____ of _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument as _____ of such corporation, and acknowledged that, being authorized to do so, he/she executed the same as for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal as of the day and year set forth above.

Notary Public

My Commission expires: _____