

## **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 31<sup>st</sup> beginning December 31<sup>st</sup> 2019 and ending December 31<sup>st</sup>,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 similarity 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
<b><u>TOTAL:</u></b>			

**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:

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

\*(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.**

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

**LOAN AGREEMENT**

**EXHIBIT E**

**EMPLOYMENT REPORT**